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September 28, 2007

**VIA HAND DELIVERY**

Ms. LaDonna Castañuela (MC-105)  
Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building F  
Austin, Texas 78753

CHIEF CLERKS OFFICE  
2007 SEP 28 PM 4:06  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RE: Application No. 35564-C; In the Matter of the Petition of Double Diamond, Inc. for an Expedited Release from Certificate of Convenience and Necessity (CCN) No. 12362 of Northwest Grayson County WCID 1 in Grayson County

Dear Ms. Castañuela:

Enclosed please find an original and one copy of Double Diamond, Inc.'s Reply to the Executive Director's, Office of Public Interest Counsel's, and Northwest Grayson County WCID No. 1's Response to Motion to Overturn be filed in connection with the above-referenced Application. Please file mark the copy and return it to me via our courier delivering same.

Thank you for your assistance in this matter.

Sincerely,

Leonard H. Dougal

LHD:pjs  
Enclosures

cc: Mr. Arturo D. Rodriguez, Jr.  
Russell & Rodriguez, L.L.P.  
102 West Morrow, Suite 103  
Georgetown, Texas 75091

Mr. Doug Holcomb, P.E. (MC-153)  
Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section  
12100 Park 35 Circle, Building F, 3rd Floor  
Austin, Texas 78753

Ms. LaDonna Castañuela

September 28, 2007

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Mr. Jeff Schmidt  
Senior Vice President/General Counsel  
Double Diamond Companies  
10100 North Central Expressway, Suite 400  
Dallas, Texas 75231

**TCEQ DOCKET NO. 2007-1374-UCR  
APPLICATION NO. 35564-C**

2007 SEP 28 PM 4:06

IN THE MATTER OF THE PETITION OF §  
DOUBLE DIAMOND, INC. §  
FOR AN EXPEDITED RELEASE §  
FROM CERTIFICATE OF §  
CONVENIENCE AND NECESSITY §  
(CCN) NO. 12362 OF NORTHWEST §  
GRAYSON COUNTY WCID 1 §  
IN GRAYSON COUNTY §

BEFORE THE  
CHIEF CLERKS OFFICE

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DOUBLE DIAMOND, INC.'S REPLY TO THE EXECUTIVE DIRECTOR'S,  
OFFICE OF PUBLIC INTEREST COUNSEL'S, AND  
NORTHWEST GRAYSON COUNTY WCID NO. 1'S  
RESPONSE TO MOTION TO OVERTURN**

TO: THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW Double Diamond, Inc., (the "Petitioner" or "DDI") and files this its Reply to the Executive Director's ("ED"), Office of Public Interest Counsel's ("OPIC") and Northwest Grayson County WCID No. 1's (the "District") Responses to Motion to Overturn, and in support thereof respectfully states as follows:

**I. ARGUMENT**

- 1. In the Order, the ED failed to make an express finding in response to Petitioner's evidence of the District's inability to provide the requested level and manner of service—30 TAC §291.113(b)(3)(B)**

Petitioner has alleged that the District is not capable of providing the service at the level, or in the manner reasonably needed or requested by current and projected service demands in the area. The basis of this allegation is set out in full in the Petition, and Petitioner's responses to Notices of Deficiencies dated March 1, 2007 and June 25, 2007. In short, the record reflects that the District has existing well capacity to serve less than 70 additional customers, has no contract for surface water supply, and cannot provide sewer service.

According to 30 TAC §291.113(d), the Commission or ED “shall grant the petition” unless there is “an express finding that the petitioner failed to satisfy the elements required in [30 TAC §291.113(b)] and supports its findings with separate findings and conclusions for each element.” The Order provides that Petitioner did not meet this element because (1) it “did not provide the district with an accurate timeline for which water service would be needed;” (2) “no distribution system has been approved by the Commission;” and (3) the District’s engineer has “indicated in a letter dated February 5, 2007” that the District can serve the proposed development.<sup>1</sup> DDI fails to see how the first two findings relate to its claim that the *District* is not capable of providing the requested level and manner of service. Only the third element relates to DDI’s claim. In its Motion, DDI objected to the fact that the ED simply incorporated mere statements of the District’s representative into its findings without referencing any tangible evidence, or providing any explanations as to how the statements of the District somehow discredited DDI’s evidence to the contrary. As we stated in our Motion, “In no uncertain terms, the Order as related to [this issue] reads as follows: DDI failed to make the demonstration because the District stated (not proved) otherwise.” We pointed out that such a standard would make it impossible for any landowner to prevail under these provisions so long as the certificate holder submitted a letter stating: “trust us, we can provide the needed service.”

The Executive Director’s Response to Double Diamond, Inc.’s Motion to Overturn (the “ED’s Response”), does not respond to any of the issues raised by DDI—the ED fails to explain how the change in the timeline of the project impacts DDI’s demonstration that the District is not capable of providing the level and manner of requested service; the ED fails to explain how the fact that no distribution line was approved relates to DDI’s demonstration that the District is not

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<sup>1</sup> Executive Order Denying Petition, dated July 23, 2007 (the “Order”) at 6.

capable of providing the level and manner of requested service (incidentally, we note that DDI has since obtained approval for the distribution system. Attachment "A" is the approval letter for the distribution system<sup>2</sup>); and the ED fails to point to any evidence in the record supportive of the District's mere statements.

Instead of using its response to support the bases of its findings in the Order, the ED now states that it had "difficulty of evaluating this criteria caused by DDI's overstatement of the level of service needed and the timeline of its need."<sup>3</sup> The ED further states that he "*could not really determine* what DDI's actual needs were in light of its overstated request and saw no credible evidence that the CCN holder would not be able to meet the needs, whatever they may be."

Section 13.254(a-1), Texas Water Code, and 30 TAC §291.113(b)(1) provide that a written request for service should contain certain information, including the time frame within which service is needed for current and *projected* service demands in the area as well as the level and manner of service needed for current and *projected* demands. The ED overlooks the term "projected" within the statute and rule and argues that a change in the original projection somehow disqualifies one from fulfilling the requirements of 30 TAC §291.113(b)(3)(B).<sup>4</sup> Furthermore, the ED is mistaken in its belief that DDI has modified the "level of service." The level of service has remained the same. This issue was explained in detail to the ED in a letter dated June 25, 2007. In that correspondence, DDI provided the ED with its most recent

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<sup>2</sup> Information in support of the distribution system was submitted to the ED on June 28, 2007, prior to the issuance of the Order.

<sup>3</sup> ED's Response at 5.

<sup>4</sup> OPIC goes a step further and states that a change in the projected timeline would trigger the 90 day review period by the certificate holder, thus starting the clock all over again. OPIC's Response at 7-8. We submit that such a reading is too restrictive as it also overlooks the term "projected" in the statute and rule, and furthermore, such a reading could allow such cases to go on in perpetuity.

projected timelines and service needs<sup>5</sup> for the development, and provided the following explanation:

The Executive Director should understand that this is a projection of current and future needs. This projection should be interpreted to mean that DDI intends to plat the property by the provided date. This projection also indicates the water requirements for the platted phase. In the case of Phase I, plat approval for that phase was obtained in March 2007. Commitment for service was needed at the time of plat approval.<sup>6</sup> Of course, whether the connections will be in place by that date is an issue that depends on numerous factors, many of which are economic in nature. Nonetheless, the water requirements of the platted phase sufficiently project the needs of the future development. Also, it is important to note that while the dates in this projection have been modified (as compared to the May 24, 2006 written request to the District), the level and manner of service has not changed. DDI attributes the modification to the time line to the delays in the regulatory process in which we are currently involved.

Surprisingly, even after being provided with the most updated projections in response to a Notice of Deficiency asking for such information, the ED states that it had “difficulty of evaluating” and “could not really determine” DDI’s actual needs. Accordingly, the ED believes that DDI did not meet the requirements of §291.113(b)(2)(B), not because of any substantive reasons, but rather, because it “could not really determine DDI’s actual needs.” Although we disagree with OPIC’s ultimate conclusion on this issue, we note that unlike the ED, OPIC had no such difficulty in determining DDI’s actual needs. In fact, OPIC discusses DDI’s needs in its brief, but concludes (incorrectly in our opinion) that the 90-day period starts over again. It is curious how the ED, who has been involved in this process since the filing of the Petition in December 2006 has “difficulty of evaluating” and “cannot really determine DDI’s actual needs,” yet OPIC who got involved in this process upon the filing of the Motion to Overturn on August 17, 2007, managed to determine DDI’s actual needs in less than 30 days.

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<sup>5</sup> The service needs have not changed. They remain the same as those communicated to the District in a letter dated May 24, 2006. *See* Petition, Exhibit E.

<sup>6</sup> Commitment for service should not be taken to mean that actual connections need to be in place. This interpretation is consistent with the regulatory language wherein a projection of future needs must be provided to the incumbent utility.

The ED has failed to make an express finding with respect to Petitioner's claims related to the District's incapability of providing the requested level and manner of service.

**2. DDI is proposing a substantially different facility that better suits its needs—30 TAC §291.113(b)(3)(B)**

The ED sets forth a standard for fulfilling this criteria with which we generally agree.<sup>7</sup> Although we generally agree with the standard used by the ED, we do not agree with the ED's analysis of the facts. The ED notes that the District's tariff requires a developer to contribute to the construction of facilities required for the developer's service needs and states that "[t]his means that it would indeed be difficult to make a showing that the CCN holder could not meet the level and manner of service required by the petitioner when the petitioner and the CCN holder are proposing *almost identical facilities*. This fact might be different if the Petitioner was *proposing substantially different facilities, and the proposed facilities could be shown to better suit its needs.*"<sup>8</sup> The District has proposed a facility with a preliminary cost estimate of over \$14 million (in addition to tap fees and capital contribution fees) which includes *over 5 miles of pipes traversing through the District's CCN area* (as it has strategically chosen the location of its facilities), as well as a \$5 million water treatment plant. DDI has identified an alternate retail provider that can provide water and sewer service (Attachment "B" contains information related to the alternate retail public utility's sewer CCN), and has estimated the cost of construction of water infrastructure to be less than \$5 million (this is the total cost for all phases of the development), with a source of water near the development, thus eliminating the need to construct over 5 miles of pipes for the benefit of the District. Yet, the ED labels these two

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<sup>7</sup> We say "generally agree" because some of the terms used by the ED, such as "substantially different" are undefined.

<sup>8</sup> ED's Response at 5 (emphasis added).

systems as “almost identical facilities.”<sup>9</sup> Even the District is not as brazen as the ED in describing the two facilities. In its reply brief, the District states as follows: “the only *material difference* in the cost estimate/preliminary plan centers on the location of the groundwater wells and the 30,000 linear foot off-site line proposed by the District to serve the Petitioner’s development.”<sup>10</sup> It is not all that surprising that the District has chosen to dismiss this “material difference.” The ED’s decision to turn its back on this “material difference” and label the two systems as “almost identical,” on the other hand, is somewhat astounding. The two systems are very different, and the ED has DDI’s assurance that the proposal from the alternate retail public utility that it has identified “better suits its needs.”

**3. The District’s decision to propose a location for the water facilities that require more than 5 miles of pipes within its CCN boundary, when other options were available to it, and require DDI to pay for all the costs constitutes an improper allocation of costs—30 TAC §291.113(b)(3)(C)**

In its Response, the ED states that he “made it clear in its Order that DDI’s confusing overstatements of its *need for service* and timeline made it unclear to the Executive Director whether the Executive Director should give any consideration to DDI’s complaints that certain charges were not properly allocable” and further states that “DDI’s actual demonstrated (and greatly reduced) need for service and timeline showed that many of the costs complained of by DDI may not even be necessary when DDI’s actual need for service is finally revealed.”

First, it is important to note that the above statement is not consistent with the analysis in the Order. In the Order, the ED justified its finding that DDI did not properly demonstrate this criteria by stating that (1) “The Petitioner has changed the timeline for which service was originally requested;” (2) The Petitioner has not formally provided the District with a request for

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<sup>9</sup> *Id.*

<sup>10</sup> Northwest Grayson County WCID No. 1’s Reply to Double Diamond, Inc.’s Motion to Overturn at p. 6 (“District’s Response”), emphasis added.

service based on the revised timeline provided in the June 25, 2007, letter;" and (3) "The District has not been given the opportunity to revise the original estimate for providing service."<sup>11</sup> Realizing that the above reasons did not justify the finding,<sup>12</sup> in its Response, the ED slips in the "need for service" as a basis for its finding that DDI did not meet the above-referenced criteria.

Second, besides the self-evident switch in its argument, the other drawback to the ED's argument is the fact that the need for service has *not* changed. DDI demands the same level of service as it requested in its March 2006 request to the District. Typically, to obtain plat approval from the county, a developer must demonstrate the availability of water and sewer service. In its June 25, 2007 response to the ED, DDI provided a revised projections of timing and service needs. As explained previously, but worth mentioning again, DDI explained that this "projection should be interpreted to mean that DDI intends to plat the property by the provided date. This projection also indicates the water requirements for the platted phase. In the case of Phase I, plat approval for the phase was obtained in March 2007. Commitment for service was needed at the time of plat approval. Of course, whether the connections will be in place by that date is an issue that depends on numerous factors, many of which are economic in nature." The confusion on the part of the ED with respect to the level of service is self-inflicted, as the need for service has been communicated to the ED, and has not changed. In fact, neither OPIC nor the District use this excuse as justification for their position that this criteria has not been met.

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<sup>11</sup> Order at 7.

<sup>12</sup> OPIC makes it clear that it only agrees with the "ED's conclusion on allocation of costs" and not on his basis. *See* OPIC Response at 10. OPIC further states that "a revised timeline does not necessarily mean that the costs quoted by the WCID are properly allocable to DDI," and later states "However, the revised timeframe alone does not settle the question of whether the WCID's cost estimate was properly allocated." A review of the District's Response similarly reveals that the District does not follow the ED's bases for denial.

Third, as pointed out in the Motion, the satisfaction of this provision [30 TAC §291.113(b)(4)] is entirely unrelated to the timing of the project in this particular case. As noted in our Motion, the District has provided no evidence that proposed timeline of the project controlled its design of the proposed water system improvements.<sup>13</sup>

After claiming that it had no basis to make a decision on this issue (due to the “confusing overstatement of the need for service and timeline”), the ED then proceeds to make a decision on the issue. At issue is over 5 miles of pipes that traverse through the District’s CCN (under the District’s proposal), in addition to other structures such as a \$5 million water treatment plant. DDI believes that the District is upgrading its system with DDI’s money. OPIC essentially argues that there is no evidence in the record suggesting that the District benefits with such upgrades. The ED appears to make a similar argument, but misstates DDI’s argument by stating: “Apparently, DDI argues that because its own proposed facilities would be on-site; connecting to the District’s off-site facilities would only benefit the District. The Executive Director fails to see how a service line which would connect service to DDI would only benefit the District.”<sup>14</sup> DDI does not claim that off-site facilities only benefit the District. DDI asserts that the system proposed by the District improperly allocates all costs to DDI.

The District makes the same argument with respect to the lack of evidence in support of the misallocation of costs. To support its claim, the District states that the systems devised by it and the alternate retail provider identified by DDI are “substantially similar” with the exception of one “material difference.”<sup>15</sup> That single “material difference” just happens to be the one item that is crucial to this issue—the location of the facilities. The District then concludes its opinions

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<sup>13</sup> See Motion at 9.

<sup>14</sup> ED’s Response at 7.

<sup>15</sup> District’s Response at 6.

with the following revealing outlook: “The actual costs of the facilities used to serve the development are immaterial.”<sup>16</sup> This statement summarizes the District’s vision and its attitude since the inception of this matter. It is clear that costs are immaterial to the District since they pass on the costs, but they are material to the developer, and the customers who have to bear such “immaterial” things such as additional actual costs.

We agree with the ED’s, OPIC’s and even the District’s claims that the District is constructing the system to serve DDI. *However, potentially any system that would be proposed by a certificate holder in response to a service request from a developer would fit within that claim.* The standard is not whether the certificate holder is proposing a system that will serve the development. Our issue is with the fact that the system proposed by the District is not proportionally related to investments in utility infrastructure needed to serve DDI’s proposed development. The District had several options with respect to serving DDI, yet it chose to not look into those options and instead chose the one path that is clearly to its own benefit. Had DDI not identified an alternative option, the ED and OPIC’s claims regarding lack of evidence may have been understandable; however, that is not the case. DDI identified an option that better suits its needs, an option that did not require 5 miles of pipes through the District’s CCN. Yet, the District chose not to pursue that or other similar options. The question is this: If the District is truly proposing a system to “solely” serve the developer, why not pursue an option that the developer has identified as better suited for it—an option that does not involve miles of pipes throughout the District’s CCN? If the developer is paying for all of the costs to construct such a system, why not work with the developer to provide a water system that suits its needs? The

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<sup>16</sup> District’s Response at 7.

answer to these questions is self-evident and will provide the ED and OPIC all the needed evidence.

It is clear that the District has chosen a path that better suits its needs rather than the needs of DDI, because it chose to propose a system that is strategically located to benefit it. The evidence that the ED and OPIC are seeking is before them—the location of the District’s proposed system *is* the evidence.<sup>17</sup> The District made its decision even after DDI identified well fields proximal to its development. Realizing that alternative locations for the water system will discredit its position, the District attempted to and continues to thwart suggestions that alternatives are possible. The District notes that its engineer has worked in the northwest Grayson County area for over 30 years, and having worked in that area, he “knows where quality water is located.” The District continues by stating that DDI proposes a water well location “whose water production is suspect and does not meet the TCEQ’s secondary constituent levels for water quality standards.” In an attempt to dissuade DDI from looking into water well locations when this matter was first brought up to the District, that same engineer that had over 30 years of experience in that area, originally opined that DDI would not be able to meet the radionuclides requirements. The District Engineer was wrong. Now, the District has changed its focus and is concentrating on “secondary constituent levels,” realizing all the while that treatment options are available and DDI has demonstrated same to the ED.<sup>18</sup>

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<sup>17</sup> There are two options: Option A and Option B. Option A costs over 3 times as much as Option B and is not the most efficient route in terms of service. Option B costs less than a third of Option A and is a more efficient route. Person X chooses Option A. Person Y has to pay for whatever Person X chooses. Doesn’t the decision of Person X in choosing the higher cost Option A give some insight into Person X’s motivations? Doesn’t the information provided above regarding Options A and B (cost, routes, alternatives...) constitute “evidence”?

<sup>18</sup> See Water Supply Feasibility Investigation for Double Diamond, Inc., Rock Creek Resort prepared by C. Raajan Mehta, P.E. (May 23, 2007). Appendix D to the referenced report relates to treatment options.

The District's decision to propose a location for the water facilities that requires 5 miles of pipes within its CCN boundary, when other options were available to it, and require DDI to pay for all the costs constitutes an improper allocation of costs.

**4. The ED creates arbitrary requirements to support its finding that the alternate retail public utility identified by DDI is incapable of providing the requisite service cannot be justified—30 TAC §291.113(b)(4)**

The ED Response does not provide any explanation to the arguments made in the Motion. The Executive Director provides the following as justification for its conclusion that DDI failed to meet this criteria: (1) the nearest Double Diamond Utilities Co. water system is located in Cleburne, Texas; and (2) DDI, not DDU, submitted plans for a proposed water plant capable of providing service to only 200 connections. DDI had previously responded to these statements by noting that:

1. There is no statutory or regulatory requirement for the alternate retail provider to have an existing water facility within the county(ies) in which the CCN encompasses or within a certain distance from same; and
2. There is no requirement for the alternate retail public utility to have submitted (and presumably obtained approval for such plans) in order to be deemed "capable" of providing the requisite service. In fact, it would be irrational for an alternate retail provider in the same position as Double Diamond Utilities Co. to have an approved system in place for the entirety of a development (or even an entire phase of a development) when there is uncertainty as to whether the alternate retail provider can provide service to the customers in the area. The statute and regulation recognize this fact, and only require the alternate retail provider to be an "existing retail public utility" and *capable* of providing the requisite service.

OPIC does the ED's homework and analyzes DDI's responses. With respect to the distance requirement, OPIC states that "the location of a water system (an existing retail public utility) certainly may be considered in the Commission's determination on the capability of the alternate retail public utility to provide service."<sup>19</sup> We agree with this statement, but note that

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<sup>19</sup> OPIC's Response at 13.

this is different than the ED's claim that DDU cannot meet this criteria because its nearest facility is some 137 miles away. Nevertheless, OPIC correctly recognizes that DDU is not relying on the existing facility that is located some 137 miles away, but rather is contemplating the construction of a facility proximal to the development.<sup>20</sup> In fact, the District is also proposing a stand-alone facility. OPIC then states that DDI, not DDU, has submitted plans for a proposed water plant, suggesting that the proposed plans should have been submitted by DDU. There is no requirement to submit any plans either by DDI or DDU. Furthermore, submittal of plans by a retail public utility, such as DDU, in a certificated area, could pose certain legal issues under the circumstances of this case given the need of the developer to utilize water. The bottom-line is that DDU has shown that it has the financial ability, it has the source of water, and the expertise to provide continuous and adequate water service to the development. These factors demonstrate its capability. Although not relevant to this inquiry, we note that approval for well construction has been obtained (*see* Attachment "C"), approval for distribution lines has been obtained (*see* Attachment "A"), and DDU has a CCN to provide sewer service to the area (*see* Attachment "B")

Unless the ED can show that DDU is not financially able (which the ED has not demonstrated or even challenged), does not have an appropriate water source (which the ED has not demonstrated or even challenged), or that DDU does not have the expertise (which the ED has not demonstrated or even challenged), then this criteria has been met.

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<sup>20</sup> "However, evidence exists that a closer DDI facility could exist." OPIC Response at 13.

## II. CONCLUSION

For the above stated reasons, DDI requests that the Commission overturn and vacate in its entirety the Order, and grant DDI's Petition for Expedited Release from Northwest Grayson County WCID No. 1's CCN.

Respectfully submitted,

JACKSON WALKER L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Telephone: (512) 236-2000  
Facsimile: (512) 236-2002

By: 

Leonard H. Dougal – 06031400

Ali Abazari – 00796094

ATTORNEYS FOR DOUBLE DIAMOND, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Reply to ED's, OPIC's and Northwest Grayson County WCID No. 1's Response to the Motion to Overturn has been forwarded by first class mail or as otherwise indicated below to the following on the 28<sup>th</sup> day of September, 2007:

Mr. Arturo D. Rodriguez, Jr.  
Russell & Rodriguez, L.L.P.  
102 West Morrow, Suite 103  
Georgetown, Texas 75091

CERTIFIED MAIL, RETURN RECEIPT  
REQUESTED

Ms. LaDonna Castañuela  
Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, Building A, 3<sup>rd</sup> Floor  
Austin, Texas 78753

HAND DELIVERY

Doug Holcomb, P.E. (MC-153) (*courtesy copy*)  
Texas Commission on Environmental Quality  
Water Supply Division  
Utilities and Districts Section  
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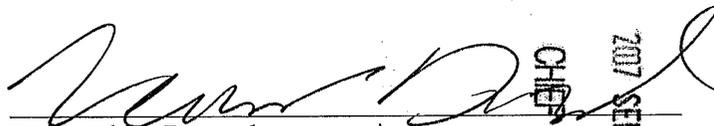
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Ms. Emily A. Collins, Attorney  
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Leonard H. Dougal

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2007 SEP 28 PM 4:06  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



Reading  
HG

PWS ID #0910147 CO

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 25, 2007

MR. GREG K. EDWARDS, P.E.  
GREG EDWARDS ENGINEERING SERVICES, INC.  
1621 AMANDA CT.  
PONDER, TEXAS 76259

Re: Rock Creek Resort - Public Water System I.D. #0910147  
Proposed Water Distribution System  
Engineer Contact Telephone: (940) 482-2907  
Plan Review Log Number 200706-172  
Grayson County, Texas

CN600696512; RN105247597

Dear Mr. Edwards:

The planning material received on June 28, 2007, with your letter dated July 24, 2007, and additional material received on August 22, 2007, for the proposed water distribution system has been reviewed. The proposed distribution system is within the Certificate of Convenience and Necessity (CCN) of Northwest Grayson WCID No. 1, CCN No. 12362, in Grayson County. There is a petition for expedited release, filed by Double Diamond, Inc., pending. The project generally meets the minimum requirements of the TCEQ's Chapter §290 - Rules and Regulations for Public Water Systems (Rules) and is **conditionally approved for construction** if the project plans and specifications meet the following requirements:

1. **Rock Creek Resort, owned by Double Diamond, Inc., is not authorized to receive compensation in any form for water service provided through this distribution system. No compensation for water service can be received from lot owners until a CCN for the area served by this distribution system is obtained. The approval granted by this letter is not a statement of the Executive Director's position in any CCN dispute over the area to be served by this distribution system. Note that construction of the proposed distribution system is at the applicant's own risk prior to obtaining a CCN.**
2. Specifications for waterline and wastewater line separation distances must conform to 30 TAC §290.44(e) (February 2004 revision). The engineer shall ensure that special attention is paid to separation distance requirements of 30 TAC §290.44(e) when water line crosses under or above a sanitary sewer line and specifically to requirement 30 TAC §290.44(e)(4)(B)(iv)(III) when the waterline crosses under a sanitary sewer line. When water line crosses under a sanitary sewer line the waterline shall be either ductile iron or steel pipe with mechanical or welded joints or DR18 PVC pipe encased in 18-foot (or longer) section of pipe, which is at least two nominal pipe diameters larger than the waterline, with a minimum stiffness of 115 psi at 5% deflection meeting the

- requirements listed under 30 TAC §290.44(e)(4)(B)(iv)(II) and shall provide an absolute minimum of one foot spacing between the crossing lines, and the joints shall be centered. Both the waterline and wastewater line must pass a pressure and leakage test as specified in AWWA C600. The engineer shall ensure that the plans and specifications are updated indicating compliance with these requirements.
3. Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the water line must be located below the frost line and in no case shall the top of the water line be less than 24 inches below ground surface [290.44(a)(4)].
  4. All newly installed pipes and related products must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI [290.44(a)(1)].
  5. The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited [290.44(b)(1)].
  6. All plastic pipe used in public water systems must also bear the National Sanitation Foundation Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 psi or a standard dimension ratio of 26 or less [290.44(a)(2)].
  7. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions [290.44(d)].
  8. The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design [290.44(d)(5)].
  9. Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines and shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent [290.44(d)(1)].
  10. The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged with a view to ultimately connecting them to provide circulation [290.44(d)(6)].
  11. The waterlines must be disinfected prior to use in accordance with the current standard, AWWA C651. A minimum of one bacteriological sample shall be collected for each 1,000 feet of completed waterline to check efficiency of disinfection procedures and shall be repeated if contamination persists [290.44(f)(3)].

Mr. Greg K. Edwards, P.E.  
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September 25, 2007

12. The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas [290.44(a)(5)].

The submittal consisted of 69 sheets of engineering drawings and technical specifications and additional engineering drawings received on August 22, 2007 showing separation distance requirements. The approved project consists of:

- 2,025 linear feet (l.f.) of 12-inch AWWA C-900 (latest version) waterline piping and associated valves, fittings, fire hydrants, service lines, meters and all other related appurtenances;
- 16,890 l.f. of 8-inch AWWA C-900 (latest version) waterline piping and associated valves, fittings, fire hydrants, service lines, meters and all other related appurtenances;
- 10,740 l.f. of 6-inch AWWA C-900 (latest version) waterline piping and associated valves, fittings, fire hydrants, service lines, meters and all other related appurtenances; and,
- 670 l.f. of 2-inch AWWA C-900 (latest version) waterline piping and associated valves, fittings, fire hydrants, service lines, meters and all other related appurtenances.

This approval is for the construction of the above listed items only. The wastewater components contained in this design were not considered.

The Rock Creek Resort public water supply system provides water treatment for the system.

An appointed engineer must notify the TCEQ's Region 4 Office at (817) 588-5800 when construction will start.

Please keep in mind that upon completion of the water works project, the engineer or owner will notify the commission's Water Supply Division, in writing, as to its completion and attest to the fact that the completed work is substantially according to the plans and change orders on file with the commission as required in §290.39(h)(3) of the Rules.

Please refer to the Utilities Technical Review Team's Log No. 200706-172 in all correspondence for this project. This will help complete our review and prevent it from being considered a new project.

Please complete a copy of the most current Public Water System Plan Review Submittal form for future submittal to TCEQ for review of improvements to a Public Water System. Every blank on the form must be completed to minimize any delays in review of your project. The document is available on our website at the address shown below.

<http://www.tceq.state.tx.us/assets/public/permitting/forms/10233.pdf>

For future reference, you can review part of the Utilities Technical Review Team's database to see if we have received your project. This is available on the TCEQ's homepage on the Internet at the following address:

[http://www.tceq.state.tx.us/assets/public/permitting/watersupply/ud/planrev\\_list.pdf](http://www.tceq.state.tx.us/assets/public/permitting/watersupply/ud/planrev_list.pdf)

Mr. Greg K. Edwards, P.E.

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September 25, 2007

You can download most of the well construction checklists and the latest revision of Chapter 290 "Rules and Regulations for Public Water Systems" from this site.

If you have any questions please contact me at (512)239-6970 or the Internet address: "dlaughli@tceq.state.tx.us " or if by correspondence, include MC 153 in the letterhead address below.

Sincerely,



David Laughlin, P.E., Team Leader  
Utilities Technical Review Team  
Water Supply, Division MC-153  
Texas Commission on Environmental Quality

DL/mmg

cc: Rock Creek Resort - Attn: Richard Tuck, c/o Double Diamond, Inc., 10100 N. Central Expressway  
#400, Dallas, Texas 75231

**B**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a  
Texas Commission on Environmental Quality document,  
which is filed in the permanent records of the Commission.  
Given under my hand and the seal of office on

APPLICATION NO. 35556-C

*LaDonna Castanuela* AUG 01 2007

LaDonna Castanuela, Chief Clerk  
Texas Commission on Environmental Quality

IN THE MATTER OF THE  
APPLICATION OF DOUBLE  
DIAMOND UTILITIES CO., A TEXAS  
CORPORATION, TO AMEND SEWER  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN No. 20705  
GRAYSON COUNTY, TEXAS

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

On JUL 26 2007, the Executive Director of the Texas Commission on Environmental Quality pursuant to Chapters 5 and 13 of the Texas Water Code considered the application of Double Diamond Utilities Co., a Texas Corporation, to amend Certificate of Convenience and Necessity No. 20705 in Grayson County, Texas.

No person has requested a public hearing on the application;

Notice of the application was given to all affected and interested parties;

The criteria set forth in *Texas Water Code* Sections 13.246(c), has been considered; and

The certificate amendment requested in this application is necessary for the service, accommodation, convenience, and safety of the public.

Now, therefore, be it ordered by the Texas Commission on Environmental Quality that the application is granted and Certificate of Convenience and Necessity No. 20705 be amended in accordance with the terms and conditions set forth herein and in the certificate.

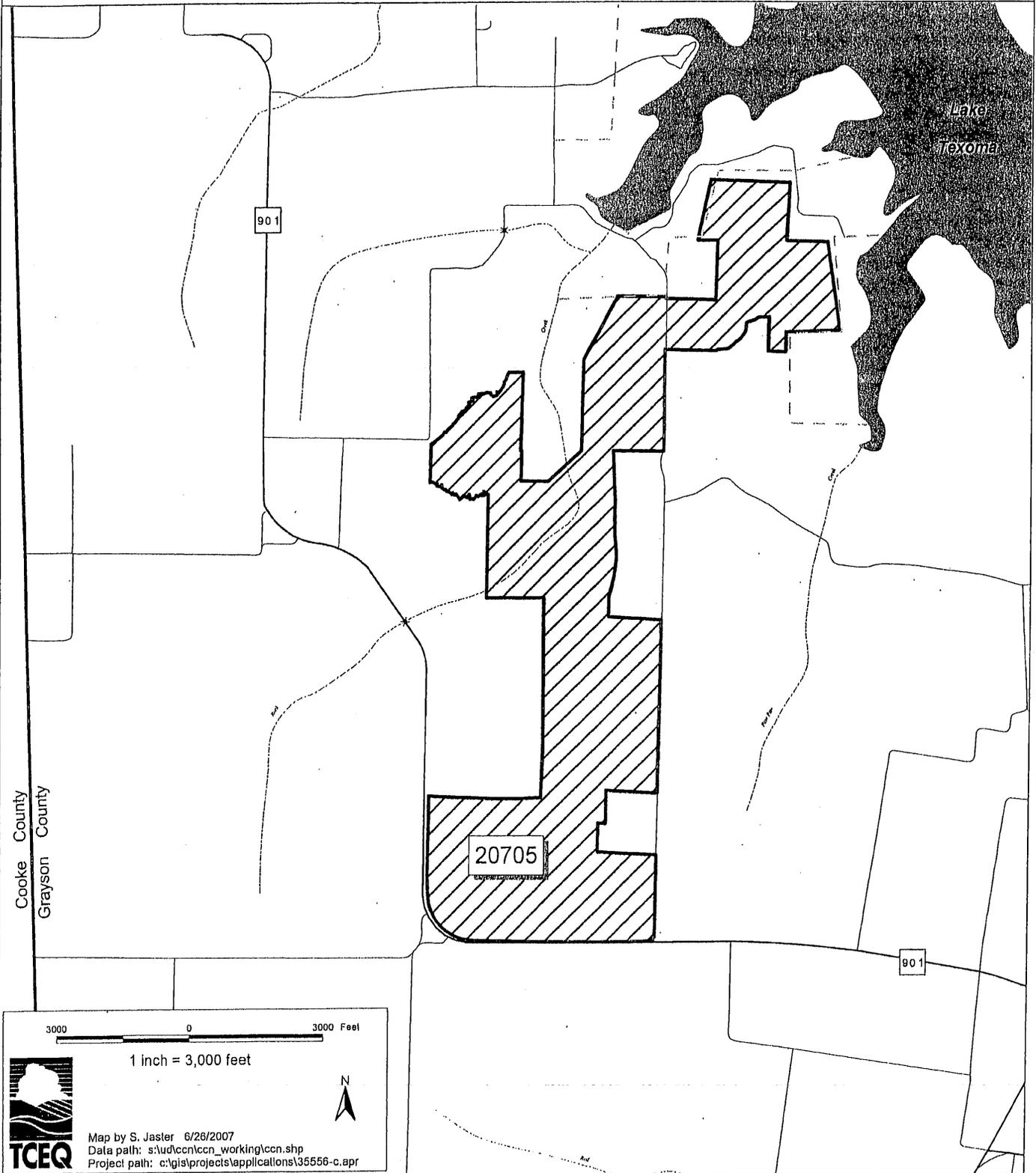
IT IS FURTHER ORDERED that Double Diamond Utilities Co., a Texas Corporation shall serve every customer and applicant for service within the area certified under Certificate of Convenience and Necessity No. 20705 and that such service shall be continuous and adequate.

Texas Commission on Environmental Quality

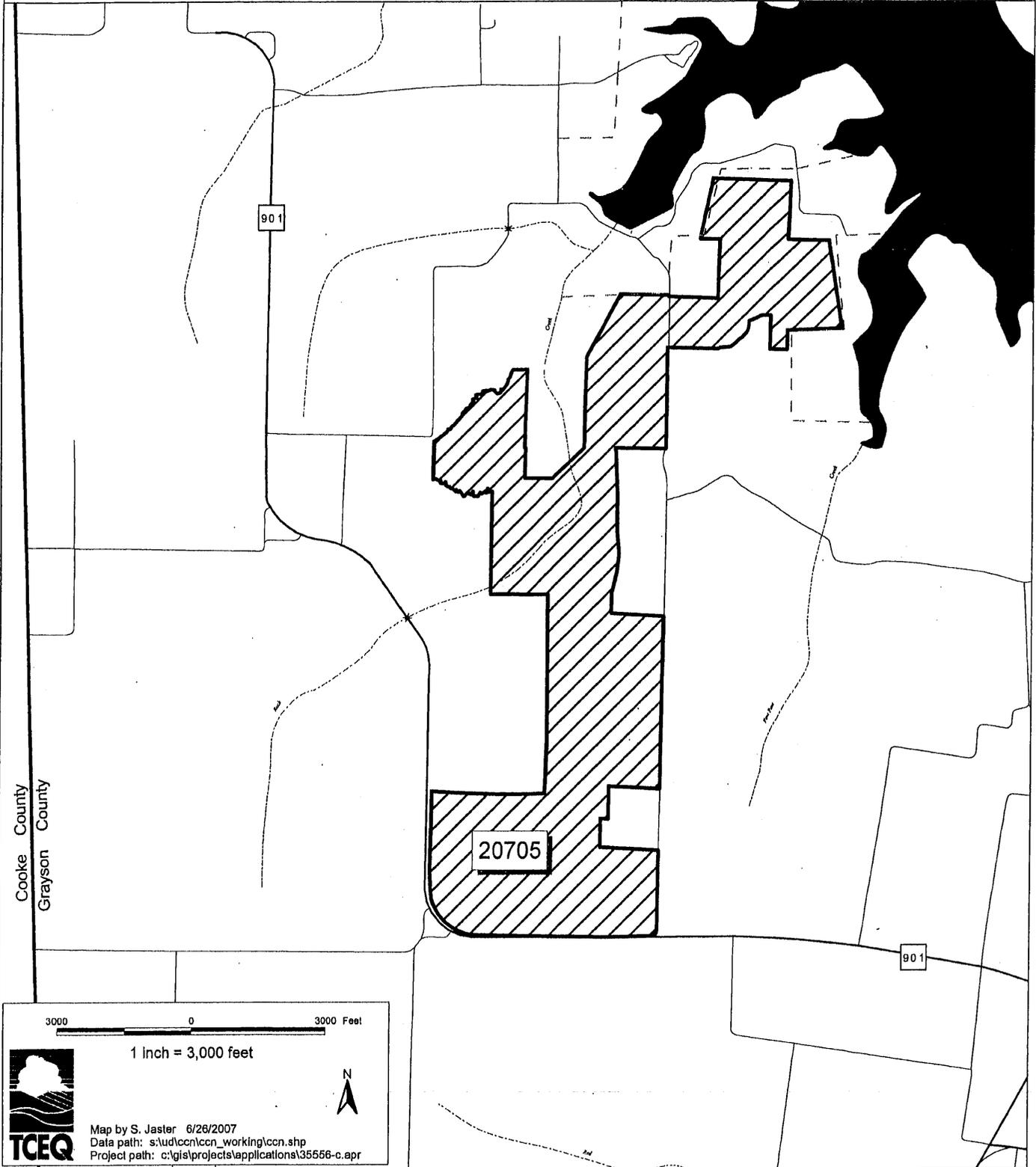
Issued date: JUL 26 2007

For the Commission

Double Diamond Utilities Co., A Texas Corporation  
Portion of Sewer Service Area  
CCN No. 20705  
Application No. 35556-C  
Grayson County



Double Diamond Utilities Co., A Texas Corporation  
Portion of Sewer Service Area  
CCN No. 20705  
Application No. 35556-C  
Grayson County



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



02-1-07 Jw

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 1, 2007

Charles P. Gillespie, Jr., P.E.  
Consulting Environmental Engineers, Inc.  
150 North Harbin Drive, Suite 408  
Stephenville, Texas 76401

RE: Double Diamond Utilities Co., a Texas Corporation  
CCN No. 20705

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director has issued final approval of the above-named application.

You may file a **motion to overturn** with the chief clerk. A motion to overturn is a request for the commission to review the TCEQ executive director's approval of the application. Any motion must explain why the commission should review the TCEQ executive director's action.

A motion to overturn must be received by the chief clerk within 23 days after the date of this letter. An original and 11 copies of a motion must be filed with the chief clerk in person or by mail. The Chief Clerk's mailing address is Office of the Chief Clerk (MC 105), TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. On the same day the motion is transmitted to the chief clerk, please provide copies to Robert Martinez, Director of the Environmental Law Division (MC 173), and Blas Coy, Public Interest Counsel (MC 103), both at the same TCEQ address listed above. If a motion is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

Individual members of the public may seek further information by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in cursive script, appearing to read "LaDonna Castañuela".

LaDonna Castañuela  
Chief Clerk

LDC/mr

cc: Blas Coy, TCEQ Public Interest Counsel (MC 103)

✓ cc: M. Williams

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 1, 2007

Mr. Charles P. Gillespie, Jr., P.E.  
Consulting Environmental Engineers, Inc.  
150 N. Harbin Drive, Suite 408  
Stephenville, Texas 76401

Re: Application No. 35556-C, Application of Double Diamond Utilities Co., a Texas Corporation, to amend Certificate of Convenience and Necessity (CCN) No. 20705 in Grayson County, Texas.

CN: 600672349; RN: 101268886

Dear Mr. Gillespie:

Enclosed are the following documents issued by the Commission in the above referenced application:

- certified copy of the order
- certified copies of the map
- copy of the CCN

This action is taken under authority delegated by the Executive Director of the Texas Commission on Environmental Quality.

You are now authorized to provide utility service in accordance with your tariff and the rules and regulations of the Commission. Your last step is to file a certified copy of the CCN map along with a written description of the CCN service area in the county clerk's office pursuant to Texas Water Code, Chapter 13.257 (r) and (s).

If you have any questions, please contact Ms. Debbie Reyes Tamayo by phone at 512/239-4683, by fax at 512/239-0030, by email at [dreyesta@tceq.state.tx.us](mailto:dreyesta@tceq.state.tx.us), or if by correspondence, include MC-153 in the letterhead address.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Cowan".

Michael D. Cowan, Division Director  
Water Supply Division

MDC/DRT/fg

Enclosures

cc: mailing list

MAILING LIST FOR APPLICATION NO 35556-C

Mr. Charles P. Gillespie, Jr., P.E.  
Consulting Environmental Engineers, Inc.  
150 N. Harbin Drive, Suite 408  
Stephenville, Texas 76401

Representing: Double Diamond Utilities, Co.

TCEQ:

Region 4 Dallas/Ft. Worth Office

Irma Santana and Teri Cisneros, Data Entry Team, MC 155  
Utilities & District Section, Water Supply Division, MC 153

Please send a copy of the signed order to Central Records to be included in the following  
Certificate of Convenience and Necessity (CCN) permanent files:

Double Diamond Utilities Co., a Texas Corporation, CCN No. 20705

C

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



PWS ID #0910147 CO

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 25, 2007

MR. GREG K. EDWARDS, P.E.  
GREG EDWARDS ENGINEERING SERVICES, INC.  
1621 AMANDA CT.  
PONDER, TEXAS 76259

Re: Rock Creek Development - Public Water System I.D. #0910147  
Proposed Water Well and Facilities  
Engineer Contact Telephone: (940) 482-2907  
Plan Review Log Number 200611-139  
Grayson County, Texas.

Dear Mr. Edwards:

The planning material received on November 10, 2006, with your letter dated November 7, 2007, for the proposed water well and facilities has been reviewed. The project generally meets the minimum requirements of the TCEQ's Chapter §290 - Rules and Regulations for Public Water Systems (Rules) and is **conditionally approved for construction** if the project plans and specifications meet the following requirements:

1. The plans and specifications submitted for the proposed water well will only support 200 connections. Therefore, this conditional approval is only for 200 connections. Additional information will have to be submitted separately to obtain conditional approval for additional connections.
2. Water distribution plans were not submitted with this project. Therefore, this conditional approval for construction does not include water distribution for this project. Additional information will have to be submitted separately to obtain conditional approval for construction of water distribution lines for this project.
3. No charge for water service can be made until the Certificate of Convenience and Necessity (CCN) is approved.
4. Properly recorded sanitary control easement covering land within 150 feet of the proposed well according 30 TAC §290.41(c)(F) and 30 TAC §290.47 (c) must be submitted with the well completion submittal.
5. The engineer shall ensure that the well is constructed meeting all the applicable requirements of 30 TAC §290.41(c) and the well casing and screen conform to the latest AWWA standards.
6. Gravel packing shall meet the TCEQ requirements 30 TAC §290.41(c)(3)(D) and AWWA specifications A100-97.
7. The engineer shall make sure that the wellhead and well vent are at least two feet above the highest known water or 100-year flood elevation.[30 TAC §290.41(c)(3K)].

Mr. Greg K. Edwards, P.E.

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June 25, 2007

8. Annular space between the casing and the well hole be pressure cemented per 30 TAC §290.41(c)(3)(C) requirements. Cement is defined in the Texas Department of Licensing and Regulations (TDLR) Water Well Driller Rules TAC 16 §76.10 (8) as a neat Portland or construction cement mixture of not more than six gallons of water 94-pound sack of dry cement. Please note that the rules do not allow for sand and/or gravel to be mixed with cement.
9. The cement-grout mixture shall comply with section 4.3.5.1, AWWA Standard A100-97 which allows a maximum of 6 gallons of water per 94 pound sack of cement weighing approximately 118 lb/cu. ft. for neat cement. A maximum 6 percent, by weight, bentonite and 2 percent, by weight, calcium chloride may be added [§290.41(c)(3)(C)].
10. Engineer shall ensure that an intruder-resistant fence is installed meeting 30 TAC §290.41(c)(3)(O).
11. The engineer shall ensure that the chlorination facility meets the applicable requirements listed in 30 TAC §290.42 (b),(e), and (f)(2).
12. All chemical storage and feed facilities must comply with TCEQ requirements specified in 30 TAC §290.42(d)(6) and (7).
13. All chemicals used in treatment of water supplied by public water systems must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives. Conformance with these standards must be obtained by certification of the product by an organization accredited by ANSI as specified in 30 TAC §290.42(j).
14. Adequate containment facilities shall be provided for all liquid chemical storage tanks. Containment facilities for a single container must be large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container, whichever is less [30 TAC §290.42 (f)(1)(E)(ii)(D)].

An appointed engineer must notify the TCEQ's Region 4 Office at (817) 588-5800 when construction will start.

**The design engineer or water system representative is required to notify the Utility Technical Review Team at (512) 239-6960 at least 48 hours before the well casing pressure cementing begins. If pressure cementing is to begin on a Monday, then they must give notification on the preceding Thursday. If pressure cementing is to begin on Tuesday, then they must give notification on the preceding Friday.**

**The TCEQ does not approve this well for use as a public water supply at this time. We have enclosed a copy of the "Public Well Completion Data Checklist for Interim Approval." We provide this checklist to help you in obtaining interim approval to use this well before we can give final approval.**

The submittal consisted of 6 sheets of engineering drawings, technical specifications and an engineering summary. The proposed project consists of:

- One public water supply well drilled to 252 feet with 242 linear feet (l.f.) of 7.5-inch o.d. galvanized pressure-cemented casing, 120 l.f. of 7.5-inch stainless steel 16-mesh screen and gravel pack;

Mr. Greg K. Edwards, P.E.

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June 25, 2007

- The well is rated for 150 g.p.m. yield with a submersible pump set at 242 feet deep. The design capacity of the pump is 150 g.p.m. at 250 feet t.d.h.;
- One 100,000 gallon ground storage tank and associated accessories, tank piping, valves, fittings and appurtenances;
- One 4000 gallon hydropneumatic tank, control system, and appurtenances with a protective coating on the inside meeting ANSI/NSF Standard 61;
- One booster pump rated for 200 gallons per minute (g.p.m.) capacity and associated housing, piping, fittings, valves and appurtenances;
- One service pump rated for 100 gallons per minute capacity and associated housing, piping, fittings, valves and appurtenances;
- 25 Pounds per day (P.P.D.) gas chlorination system and associated piping, fittings, controls, protected by housing or other means from vandalism and adverse weather conditions;
- Electrical controls and related appurtenances; and,
- 6 foot high intruder resistant fence with three strands of barbed wire at a 45 degree angle and lockable gate.

The proposed water well will be located approximately 1½ miles north of the intersection of FM 901 and Rock Creek Rd. in Grayson County, Texas.

Please keep in mind that within 60 days of project completion the engineer must attest in writing that the project was constructed as described in the approved plans, specifications and any change orders filed with the TCEQ as required in §290.39(h)(3) of the Rules.

Please refer to the Utilities Technical Review Team's Log No. 200611-139 in all correspondence for this project. This will help complete our review and prevent it from being considered a new project.

Please complete a copy of the most current Public Water System Plan Review Submittal form for future submittal to TCEQ for review of improvements to a Public Water System. Every blank on the form must be completed to minimize any delays in review of your project. The document is available on our website at the address shown below.

<http://www.tceq.state.tx.us/assets/public/permitting/forms/10233.pdf>

For future reference, you can review part of the Utilities Technical Review Team's database to see if we have received your project. This is available on the TCEQ's homepage on the Internet at the following address:

[http://www.tceq.state.tx.us/assets/public/permitting/watersupply/ud/planrcv\\_list.pdf](http://www.tceq.state.tx.us/assets/public/permitting/watersupply/ud/planrcv_list.pdf)

You can download most of the well construction checklists and the latest revision of Chapter 290 "Rules and Regulations for Public Water Systems" from this site.