

# State Office of Administrative Hearings

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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CHIEF CLERKS OFFICE



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 13, 2006

Derek Seal  
General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-06-0425; TCEQ Docket No. 2005-1516-UCR; In Re: Application of Tapatio Springs Service Company, Inc. to Amend Certificates of Convenience and Necessity Nos. 12122 and 20698 in Kendall County, Texas**

Dear Mr. Seal:

This is my recommendation concerning the exceptions filed by Andrew Calvert, *et al.* (Opposing Ratepayers) to my Proposal for Decision (PFD) in the above case. No other party filed exceptions.

Attachment A to the Opposing Ratepayers' exceptions is not in evidence, and they have not shown or even argued that there is good cause to reopen the record to admit it. I recommend that the Commission strike Attachment A and the Opposing Ratepayers arguments based on it, which would be from the top of page 2 through footnote 3 on that page.

The Opposing Ratepayers also argue that the area that Tapatio Springs Service Company, Inc. (Tapatio) seeks to add to its certificate of convenience and necessity (CCN) is within a Priority Groundwater Management Area (PGMA). That could be true, but there is no evidence that it is that I have found in reviewing the record. Counsel for the Opposing Ratepayers asked ED witness Adhikari if the area was in a PGMA, but he did not know if it was.<sup>1</sup> The Opposing Ratepayers did not offer evidence to show that the Requested Area lies within a PGMA.

The also argue that a groundwater district in that area is concerned about approval of Tapatio's application. That argument is based on an exhibit which the Opposing Ratepayers offered, withdrew, and reoffered, but that exhibit was *not* admitted into evidence. The Opposing Rate did

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<sup>1</sup> Tr. 135.

Letter to Mr. Derek Seal, General Counsel  
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make an offer of proof of that document.<sup>2</sup> I see no basis to reconsider the evidentiary ruling and admit the exhibit.

I recommend that the Commission strike the portions of the Opposing Ratepayers exceptions that discuss these matters that are not in evidence:

- page 5 from "C. Conflict Between the Hill Country PGMA" through the end of page 6;
- page 7, line 13 from "Approval of this" through line 17, footnote 24; and
- page 8, lines 4 through 8.

As to the Opposing Ratepayer exceptions that *are* based on evidence, I recommend that the Commission overrule them. For the most part, they are that same arguments that are considered and rejected in the PFD. Their only wholly new argument is that the Non-Standard Service Agreement between Tapatio and CDS International, Inc., is null and void. But as Tapatio responds, that argument is contradicted by the evidence.

Sincerely,



William G. Newchurch  
Administrative Law Judge

WGN:nl  
cc: Mailing List

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<sup>2</sup> Tr. 76 *et seq.* and 144 *et seq.*

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**STYLE/CASE:** TAPATIO SPRINGS SERVICE CO, INC  
**SOAH DOCKET NUMBER:** 582-06-0425  
**REFERRING AGENCY CASE:** 2005-1516-UCR

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cc: Docket Clerk, State Office of Administrative Hearings