

JOHN W. DAVIDSON  
ARTHUR TROILO  
TERRY TOPHAM  
CHEREE TULL KINZIE  
R. GAINES GRIFFIN  
RICHARD E. HETTINGER  
PATRICK W. LINDNER  
IRWIN D. ZUCKER  
RICHARD D. O'NEIL  
J. MARK CRAUN

LAW OFFICES OF  
**DAVIDSON & TROILO**  
A PROFESSIONAL CORPORATION

SAN ANTONIO  
7550 W IH-10, SUITE 800, 78229-5815  
210/349-6484 • FAX: 210/349-0041

LEA A. REAM  
FRANK J. GARZA  
JAMES C. WOO  
RICHARD L. CROZIER  
R. JO RESER  
MARIA S. SANCHEZ  
DALBY FLEMING  
LISA M. GONZALES

AUSTIN OFFICE  
919 CONGRESS, SUITE 810, 78701  
512/469-6006 • FAX 512/473-2189

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
NOV 6 PM 2:13  
OFFICE

November 6, 2006

**VIA FACSIMILE & HAND-DELIVERY**

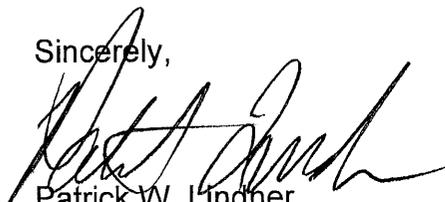
Ms. LaDonna Castanuela, Chief Clerk  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, TX 78711-3087

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

Dear Ms. Castanuela:

Enclosed for filing is an original and 11 copies of Applicant Tapatio Springs  
Service Company, Inc.'s Response to Intervenors' Exceptions in the above-referenced  
matter.

Sincerely,



Patrick W. Lindner  
For the Firm

PWL/re  
Enclosures

cc: Mailing List

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

Docket Clerk for  
William G. Newchurch  
Administrative Law Judge  
State Office of Administrative Hearings  
William P. Clements Building  
300 West Fifteenth Street  
Austin, TX 78701  
Fax: (512) 475-4994

La Donna Castanuela  
Office of the Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087  
Fax: (512) 239-3311

Garrett Arthur  
Staff Attorney  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel  
MC-175, P. O. Box 13087  
Austin, Texas 78711-3087  
Fax: (512) 239-6377

Kathy Humphreys-Brown  
Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division  
MC-173, P. O. Box 13087  
Austin, Texas 78711-3087  
Fax: (512) 239-0606

Elizabeth R. Martin  
Attorney at Law  
P. O. Box 1764  
Boerne, Texas 78006  
Fax: (830) 816-8282

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

APPLICATION OF TAPATIO  
SPRINGS SERVICE COMPANY,  
INC., TO AMEND CERTIFICATES  
OF CONVENIENCE AND  
NECESSITY NOS. 12122 AND  
20698 IN KENDALL COUNTY,  
TEXAS

§ BEFORE THE STATE OFFICE  
§  
§ OF  
§ ADMINISTRATIVE HEARINGS

2005 NOV -6 PM 2:13  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

**APPLICANT'S RESPONSE TO INTERVENORS' EXCEPTIONS.**

**I.  
INTRODUCTION**

The intervenors opposed to the application<sup>1</sup> ("Intervenors") continue to disgorge volumes of minutiae to cloud the following undisputed facts, among others:

1. CDS wants its property within Applicant's CCN.
2. CDS is responsible for providing all new infrastructure, additional water supply, and permits required for Applicant to serve the property and has already financed the acquisition of at least 250 acre-feet of surface water supply towards this commitment.
3. If the application is granted, but CDS does not fulfill its contractual obligations to Applicant for whatever reason, Applicant is not committed to expend funds or use its existing water supply and sewage treatment resources to serve CDS' property.
4. Approval of the application benefits the ratepayers by providing access to \$1.5 million for construction of a water main and increasing the Applicant's customer base without increasing its costs; while denial of the application harms the ratepayers because Applicant must then solely finance the water main.
5. Granting the application is consistent with state policy of consolidating retail utilities, consistent with the regional water plan promoting conjunctive use of surface and groundwater, and avoids the proliferation of individual water wells.

<sup>1</sup> The ratepayers supported the application withdrew as parties prior to the hearing on the merits. However, the pleadings in support of the application filed by these ratepayers remain a part of the record and show that more existing ratepayers support the application than the few numbers of ratepayers who oppose the application.

6. More ratepayers favor the application than the few who oppose the application.

## II.

### ALLEGEDLY NEW STUFF (INTERVENORS' SECTION ONE)

#### A. AFFIDAVITS FROM GBRA STAFF SHOULD BE EXCLUDED

The record in this proceeding is closed. Intervenors wrongfully attempt to introduce and argue new evidence, consisting of two affidavits both containing hearsay about conversations that occurred after the record closed. Intervenor does not allege any grounds for the admission of this evidence and the evidence is hearsay.

Even if this evidence is admitted, the recommendation to approve the application should not change. The ALJ concluded that the record reflects that the requirements of Water Code, 13.241 are satisfied. The record further reflects that the contract between the Applicant and the developer obligates the developer to obtain additional water supplies required to serve the developer's project and if the additional water supply in excess of the current supply cannot be developed, the developer will need to purchase a supply elsewhere, drill wells, or reduce the planned density accordingly.<sup>23</sup>

#### B. THE CONTRACT BETWEEN APPLICANT AND CDS INTERVENORS' CONTINUES IN EFFECT.

Intervenors allege that the contract has terminated since the closing of the record, ignoring the evidence in the record, the ALJ's analysis beginning on page 29 of the PFD, and without benefit of any first-hand knowledge. The record reflects that construction of the "Extension" had already begun at the time of the hearing.<sup>4</sup>

#### C. INTERVENORS' ARGUMENT THAT THE TCEQ CANNOT AMEND A CCN TO ADD TERRITORY IS LUDICROUS.

Intervenors argue that the Commission has wrongfully been amending CCNs to add territory during the past twenty years. The ALJ fully explained Intervenors' error. The undersigned counsel, who has been obtaining and amending CCNs for more than twenty-five years, cannot recall a CCN amendment that did not include the addition of territory.

## III.

### INTERVENORS' ADMITTEDLY OLD STUFF (INTERVENORS' SECTION TW0)

<sup>2</sup> Testimony of John J. Parker, Evidentiary Hearing, pg 41. Testimony of John J. Parker, Pre-Filed Testimony, pg 5.

<sup>3</sup> Testimony of John Mark-Matkin, Pre-Filed Testimony, pgs 2, 5.

<sup>4</sup> Testimony of John J. Parker, Evidentiary Hearing, pgs 44, 41, 45. Testimony of John Mark-Matkin, Evidentiary Hearing, pg 69. Testimony of John Mark-Matkin, Pre-Filed Testimony, pg 3.

**IV.  
INTERVENORS' EXCEPTIONS SHOULD BE OVERRULED.**

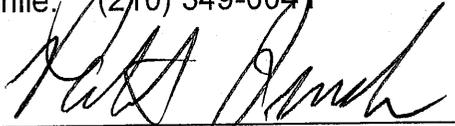
The Intervenor's listing of numerous findings and conclusions objectionable to the Intervenor without providing a summary of the grounds for the objection or stating the Intervenor's desired change to the finding of fact or conclusion of law is unfair to the ALJ and the Commission and should be overruled.

**V.  
CONCLUSION**

Any exceptions based upon Intervenor's new evidence should be denied because these exceptions are based upon facts outside of the record. Intervenor's new argument that the agreement between Applicant and the developer has terminated is wrong and contrary to the evidence. Intervenor's new argument that the Commission does not have jurisdiction to increase a utility's service area by amending a CCN has already been addressed by the ALJ. The ALJ conscientiously addressed each of the Intervenor's previous arguments and reached supportable conclusions that do not need to be changed and should not be changed.

Respectfully submitted,

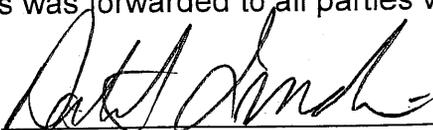
Davidson & Troilo, P.C.  
7550 West IH-10, Suite 800  
San Antonio, Texas 78229  
Telephone: (210) 349-6484  
Facsimile: (210) 349-0041

By: 

Patrick Lindner  
State Bar No. 12367850

**CERTIFICATE OF SERVICE**

I certify that on 6<sup>th</sup> day of November 2006, a true and correct copy of Applicant's Response to Intervenor's Exceptions was forwarded to all parties via facsimile on the following mailing list.

  
Patrick W. Lindner

William G. Newchurch  
Administrative Law Judge  
State Office of Administrative Hearings  
William P. Clements Building  
300 West Fifteenth Street  
Austin, TX 78701

Fax: (512) 463-7949

La Donna Castanuela  
Office of the Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

Fax: (512) 239-3311

Garrett Arthur  
Staff Attorney  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel  
MC-175, P. O. Box 13087  
Austin, Texas 78711-3087

Fax: (512) 239-6377

Kathy H. Brown  
Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division  
MC-173, P. O. Box 13087  
Austin, Texas 78711-3087

Fax: (512) 239-0606

Elizabeth R. Martin  
Attorney at Law  
P. O. Box 1764  
Boerne, Texas 78006

Fax: (830) 816-8282

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

APPLICATION OF TAPATIO	§	BEFORE THE STATE OFFICE
SPRINGS SERVICE COMPANY,	§	
INC., TO AMEND CERTIFICATES	§	OF
OF CONVENIENCE AND	§	
NECESSITY NOS. 12122 AND 20698	§	ADMINISTRATIVE HEARINGS
IN KENDALL COUNTY, TEXAS		

APPLICANT'S RESPONSE TO CLOSING ARGUMENTS OF OPIC AND THE  
RATEPAYERS OPPOSED TO THE APPLICATION

**I.**  
**Introduction**

OPIC and the Ratepayers opposed to the application focus on minor details in an effort to blur the following undisputed basic facts that support granting the application:

1. CDS wants its property within Applicant's CCN.
2. CDS is responsible for providing all new infrastructure, additional water supply, and permits required for Applicant to serve the property and has already financed the acquisition of at least 250 acre-feet of surface water supply towards this commitment.
3. If the application is granted, but CDS does not fulfill its contractual obligations to Applicant for whatever reason, Applicant is not committed to expend funds or use its existing water supply and sewage treatment resources to serve CDS' property.
4. Approval of the application benefits the ratepayers by providing access to \$1.5 million for construction of a water main and increasing the Applicant's customer base without increasing its costs; while denial of the application harms the ratepayers because Applicant must then solely finance the water main.
5. Granting the application is consistent with state policy of consolidating retail utilities, consistent with the regional water plan promoting conjunctive use of surface and groundwater, and avoids the proliferation of individual water wells.
6. More ratepayers favor the application than the few who oppose the application.

**II.**  
**Financial Capability**

Financial capability is one of the several factors that must be considered, but in this application financial capability is really of secondary importance.

The financial ability of the Applicant becomes an issue only if the application is denied. If the application is approved, CDS becomes responsible for practically all costs of extending Applicant's existing system and Applicant must pay only the incremental cost of oversizing the water main that connects its existing water system to the point of delivery for the treated water

from GBRA. However, if the application is denied then CDS cancels the agreement and the \$1.5 million dollars of CDS contribution in aid of construction disappears, leaving Applicant and its existing ratepayers to shoulder the entire cost of the water main. Only then, if the application is denied, does the Applicant's financial capability become an issue. According to the Ratepayers, the Applicant does not appear financially capable of constructing the water main without CDS' contribution, and if that is the case, then the application should be granted so Applicant has access to the additional funding provided by CDS under the service extension agreement.

If the application is approved, CDS contributes at least \$1.5 million towards the cost of the water main, and the letter from Bank of America confirms CDS has the funds for at least this share of the main. The Applicant has access to the funds necessary to pay its share of the expenses. (See Jay Parker, direct testimony, page 7, line 40-page 8, line 13.)

In addition, if the application is approved, the Applicant has the regulatory approval necessary to offer retail service within the area. Under its tariff and the CDS contract, Applicant is not obligated to advance funds to provide the service or to construct additional infrastructure, but only to use any its existing water storage and water distribution system to provide service. (See Jay Parker, cross examination, page 53, line 21 thru page 55, line 3.) The Applicant can require CDS or any other developer to install the infrastructure at the developer's cost. (See Daniel Smith, cross-examination, pg. 99-page 100, line 13.)

CDS has timely performed its obligations and there is no reason to doubt that it will not do so in the future. (See Jay Parker, direct testimony.) The Commission has previously allowed CCN applicants to rely upon contractual obligations of third parties to satisfy the requirements of section 13.241. *Bexar Metropolitan Water Dist. v. Texas Com'n on Environmental Quality*, 85 S.W.3d 546 (Tex. App.-Austin, 2006). The TCEQ regularly approves applications based upon utility contracts with developers. (See Daniel Smith, cross-examination, pg 99, line 24 to page 100, line 13, page 106, line 3.)

### III. Managerial Ability

The record clearly establishes that Applicant has been providing continuous and adequate service to its customers and that Applicant will be able to continue this service if the application is approved. The Ratepayers did not allege any prior or existing service complaints.

Jay Parker has been managing the utility for over fifteen years. During this time he has overseen main extensions in the past, when the Ranger Creek System and the Tapatío Spring System were interconnected and as new subdivisions within Tapatío have been developed. (See Jay Parker, direct testimony, page 6, line 6, to page 7, line 24; Jay Parker, cross-examination, page 45, line 5-16.) The service extension agreement with CDS is comparable to these past projects that were successfully completed. Under the agreement, CDS is responsible for hiring a registered professional engineer to design the system infrastructure and submit plans and specifications to Applicant for its review and approval and also to the TCEQ for its review and approval in

accordance with TCEQ rules.<sup>1</sup> (See Pre-Filed testimony of Darrell Nichols, page 5.) When these approvals are obtained, CDS hires the contractor to construct the improvement with oversight by the Applicant. When all the tests are completed and Applicant's engineers assure Applicant that the work was constructed in accordance with the approved plans and specs, the Applicant accepts title and places the line into service. (Id.) There is nothing complicated or unusual about this process.

What about the easements for the water line? Deciding on a final alignment in order to acquire the easement depends in large part on whether the Applicant has the additional \$1.2 million contribution from CDS with which to work. Whether or not Applicant will have the additional \$1.5 million from CDS depends solely on the TCEQ's decision in this matter. The Ratepayers' request for hearing delayed TCEQ action on the application, thereby stalling easement acquisition and CDS' contribution towards the water main project pending the TCEQ action on the application. Therefore, Ratepayers are themselves directly responsible for the delay occasioned by their request for hearing.

Applicant's decision to purchase 500 acre-feet of treated surface water from GBRA, and then increase this amount an additional 250 acre-feet, shows Applicant's commitment to the regional water plan. The regional water plan, attached to the pre-filed testimony of Darrell Nichols, promotes the need for utilities within Kendall County to develop conjunctive use of surface and groundwater supplies.

Jay Parker negotiated a contract with CDS that provides Applicant access to an additional \$1.5 million for construction of a water main so that the Applicant is only required to pay the incremental cost of oversizing, and, at CDS' sole cost, requires CDS to provide the water supply sources and infrastructure needed to serve the development. This arrangement simply makes good sense for the Applicant and its ratepayers and demonstrates Jay Parker's commitment to address the real, substantive issues facing the utility.

#### IV. Water Supply Issues

Ratepayers mischaracterize the extent of the service commitment, so their arguments based upon this mischaracterization are without merit. The service commitment is not for 1,700 connections, but for the lesser of either 1,700 connections or the number of connections that can be served by the additional water supply (surface and groundwater) provided by CDS to the Applicant. The Non-Standard Service Agreement (Jay Parker direct testimony, attachment 1) clearly states: (i) CDS requests service "to *no more than* 1,700 future customers within the Property" (3<sup>rd</sup> recital (emphasis added), and that facilities will be *sized* to accommodate Developer's projected demand equivalent to 1700 connections, but the *actual demand will be determined later*" (section 9(c)(emphasis added)), in the event Developer plans are revised to decrease the required number of connections, all contributions in aid of construction which are variable or no longer required will be proportionately reduced (section 9(f)), and under no circumstances is Utility Company obligated to use any portion of the 500 acre-feet reserved under the GBRA contract to provide

---

<sup>1</sup> In order to get TCEQ approval of plans, the Applicant at that time must show availability of water. 30 TAC §290.41(b).

water service to the property or to use the groundwater supply facility that it owns on the date of the contract to supply water to the Property (section 9(1)); *See also Pre-Filed Testimony of Jay Parker and cross examination of Jay Parker.*

As of the date of the hearing, Applicant has acquired an amendment to the GBRA contract for an additional 250 acre-feet for service to the territory to be added. (See Pre-Filed Testimony of Darrell Nichols, page 11.) There are several alternatives available to increase this already existing supply, as described in the testimony of Jay Parker and John Mark Matkin, P.E. However, if all of these alternatives to increase the supply of water available to the CDS property are exhausted without increasing the supply, then the service commitment is capped at this level. See Non-Standard Service Agreement (section 9 (1)); Jay Parker direct testimony, page 5, lines 14-22). Accordingly, Applicant has satisfied the requirements of Water Code, Section 13.241(b).

## V. Response to OPIC

Upon what basis does OPIC ignore the sixty ratepayers who support the application and defer to the ten who do not? There is absolutely no evidence that the amendment will result in a rate increase. There is absolutely no evidence of any legitimate financial risk. There is absolutely no evidence of any water quality risk. There is only evidence that granting the application will greatly benefit the ratepayers.

The need for service is clearly and irrefutably reflected by the contract between Applicant and CDS wherein CDS requests service.

Regarding the easement for the GBRA water main, Applicant had to pay GBRA "reservation" fees in order to have access to the GBRA water. Under the GBRA contract, Applicant had to begin paying for the GBRA project long before GBRA could deliver any water. GBRA did not begin supplying water until April 2006. (See Jay Parker, cross-examination, page 44, lines 3-23, page 59, line 17-19). Under Section 1 of the agreement between CDS and the Applicant, CDS is responsible for design of the water main and Section 9(a) requires CDS and the Applicant to cooperate with GBRA regarding the change of the delivery point. Until Applicant's authority to serve CDS is approved and the location of the delivery point is confirmed, easement acquisition must be deferred. But CDS has no incentive to resolve the delivery point issue and pay for the work required to obtain the easements until the application is approved. The Ratepayers' protest of the pending application casted doubt on whether Applicant would be authorized to serve the CDS property, which in turn delayed work on all other aspects relating to the service extension. In other words, the Ratepayers' actions delayed the easement acquisition; nevertheless OPIC unfairly blames Applicant for the delay.

Lost and unaccounted for water is an important issue to Applicant and Applicant has recently fixed a large break that it suspects is largely responsible for the loss. (See Jay Parker, cross-examination, page 39, line 2 thru page 40, line 2). The only evidence in the record is the percentage from past years, and there is no evidence in the record of the reasonable range of lost and unaccounted for water for systems comparable to the Applicant's system, so there is no

measure from which to conclude whether or not this percentage is unreasonable. Further, if the application is approved, Applicant will have access to a large customer base from which to recover the revenue needed to repair and replace mains.

Regarding Applicant's debt to equity ratio, the undisputed evidence is that the debt to Clyde Smith has been paid. (See Jay Parker, cross-examination, page 33, lines 10-16; page 35, lines 2-4.) This is no longer an issue. Dan Smith testified in favor of the application and did not change his testimony or his recommendation that the application be approved.

Regarding environmental integrity, the adverse environmental impacts if the application is denied were fully described in Applicant's pre-filed testimony. These adverse impacts included, among others, the proliferation of individual wells serving each lot within the CDS development, thus impairing water quality (contamination from more wells) and water quantity (base and peak demand being satisfied by groundwater, not base demand being satisfied from surface water).

OPIC proposes that the TCEQ "punish" Applicant by denying the application because of perceived lack of progress on easement acquisition and water loss. However, this does not punish Applicant, but punishes the existing ratepayers because the \$1.5 million contribution by CDS towards the water main extension will not be available, nor will the increased customer base be available to recover the costs of constructing the new water main to get the GBRA water or repairing the existing water mains to reduce water loss (if the water loss is due to leakage, and not to other factors, such as slow running meters, etc.). Denial also punishes CDS, who wants service from Applicant.

## VI. Response to Ratepayers

Ratepayers' allegations regarding water supply, financial, and management related issues are addressed above. The Ratepayers never allege and certainly did not present any evidence that Ratepayers are harmed by any of the deficiencies they allege. The uncontroverted testimony is that the Ratepayers are insulated from harm and that approval of the application presents more potential benefits to all of the Applicant's ratepayers.

Applicant fully complied with the TCEQ's regulatory requirements to add the territory to its existing CCN. As the ALJ knows from many years of experience, addition of service area has always been processed as an application to amend a CCN. Applicant defers to the Executive Director to respond to Ratepayers' constitutional/statutory arguments, if any response is merited. Daniel Smith testified that the applications are extensive and that applicants are not expected to send every piece of documentation. Daniel Smith, cross-examination, page 107, lines 25. The Ratepayers conducted full discovery, including production of documents, interrogatories, and depositions, so they had full access to all information they needed to supplement and question the information provided in the application and testimony.

As explained below, the mere fact that a contested-case hearing was conducted is evidence that the application was deemed administratively complete and that the Applicant provided the Commission with all information that the Executive Director considered essential for its

recommendation. Applications for amended CCNs are subject to chapter 281 of the TCEQ rules. Section 281.2(8). If an application is not administratively complete, or requested information is not provided within thirty days, the ED issues a deficiency notice and returns the application. Section 281.18(a). If the application is deemed administratively complete, or not returned as deficient, the ED performs a technical review. During the technical review, if additional information deemed required by the ED is not timely provided and the information is considered essential to make recommendations to the commission on a particular matter, the ED may return the application to the applicant. Section 281.19(b). When the ED has completed the administrative and technical review, the application is forwarded to the commission. Section 281.22(a). Exhibit P-7 states that if the additional requested information is not provided by the Applicant, the application would be dismissed for failure to prosecute, so it can be presumed that Applicant provided all the information deemed essential by the ED or otherwise the application would not have been further processed and the ED witnesses would not have recommended approval of the application. Applicant is not required to establish at the contested-case hearing that its application complied with each administrative and technical requirement because it had already done so prior to the hearing. *Steidinger v. Texas Commission on Environmental Quality*, 169 S.W. 3d 258 (Tex. App.-Austin, 2005).

Ratepayers also mischaracterize the system. Mr. Matkin was quite clear in his testimony that Ratepayers' attempt to equate the requirement of 0.6 gallons per minute into acre-feet per year, is not accurate conversion or consistent with TCEQ rules. (See Matkin cross-examination, page 71, line 9 thru page 72, line 17, page 81, lines 10-19.) The utility system will be an integrated system with a common water main from GBRA delivery point to the Applicant's existing water tank on Jones Road, and from there using an existing water main to the existing service area for delivery within the CDS property. (See Pre-Filed testimony of Nichols, page 6, line 25 to page 7, line 6; Matkin-Hoover Pre-Filed testimony, attachment 1.)

Ratepayers propose to punish the Applicant by denying the application. But who is actually punished if the application is denied? CDS is punished because they will not have access to utility service. The Applicant's existing customers are also punished because CDS' monetary contribution to the water main will not be available nor will the increased customer base be available to share fixed costs of operating and maintaining the system. The regional water plan will be a victim if the application is denied because CDS will need to develop its property using individual water wells, rather than by using the conjunctive use of surface water and ground water. These individual wells will be used to supply all the water needs of the homes within the development, not just peak demand, and this increased demand will put greater stress on the groundwater resources including the wells used by Applicant.

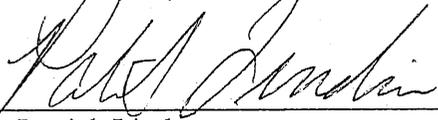
## VII. Conclusion

The overwhelming evidence in this case supports granting of the application. Denying the application deprives CDS of utility service that it wants and for which it has agreed to pay; and deprives Applicant and its ratepayers access to \$1.5 million in funds for construction of a needed water main. By contrast, the ratepayers who oppose the application, fewer in number than the ratepayers who support the application, cannot and did not specify one element by which they

may be harmed if the application is approved, primarily because such harm simply will not occur. The application should therefore be granted

Respectfully submitted,

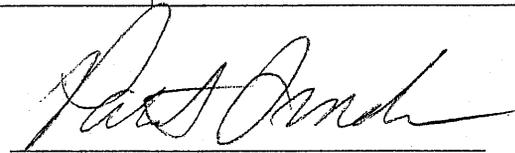
Davidson Troilo, P.C.  
7550 West IH-10, Suite 800  
San Antonio, Texas 78229  
Telephone: (210) 349-6484  
Facsimile: (210) 349-0041

By:   
Patrick Lindner  
State Bar No. 12367850

CERTIFICATE OF SERVICE

I hereby certify that on the 2<sup>nd</sup> day of August 2006, a true and correct copy of the foregoing document was forwarded to each of the parties listed below via facsimile and first-class mail.

Elizabeth R. Martin Attorney at Law P. O. Box 1764 Boerne, TX 78006 830/816-8282 (fax) Representing Ratepayers	Ms. LaDonna Castanuela, Chief Clerk Office of the Chief Clerk MC-105 P.O. Box 13087 Austin, TX 78711-3087 512/239-3311
Garrett Arthur Staff Attorney TCEQ Office of Public Interest Counsel PO Box 13087 MC-175 Austin, Texas 78711-3087 512/239-6377 – facsimile Representing TCEQ Public Interest Council	State Office of Administrative Hearings Administrative Law Judge Mike Rogan William P. Clements Building 300 West Fifteenth Street Austin, TX 78701 512/475-4994
Kathy H. Brown Staff Attorney TCEQ Environmental Law Division PO Box 13087 MC-173 Austin, TX 78711-3087 512/239-0606 – facsimile Representing Texas Commission on Environmental Quality	Eric Sherer Attorney at Law 11124 Wurzbach Rd., Ste. 100 San Antonio, TX 78230 210/696-9730 210/696-9675 (fax) Representing Ranger Creek HOA



Patrick Lindner