

Control Number: 43781



Item Number: 156

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014

43781

SOAH DOCKET NO. 582-03-1994

TCEQ DOCKET NO. 2002-1250-NGR

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APPLICATION OF THE TOWN OF  
 PROSPER TO AMEND SEWER  
 CERTIFICATE OF CONVENIENCE  
 AND NECESSITY (CCN) NO. 20888  
 IN DENTON COUNTY,  
 APPLICATION NO. 34004-C

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PUBLIC UTILITY COMMISSION  
 BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

TOWN OF PROSPER'S REPLY TO FISHTRAP PROPERTIES, LLP'S  
OBJECTIONS TO PRE-FILED TESTIMONY

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Town of Prosper ("Prosper" or "Town") and files this its Reply to Fishtrap Properties, LLP's ("Fishtrap") Objections to Prosper's Pre-Filed Testimony. For the sake of expediency and convenience, Prosper has re-stated Fishtrap's objections and provided the Town's response immediately following the objection. The objections are copied verbatim from Fishtrap's pleading and ordered and numbered in the same manner as provided by Fishtrap.

**Objections to the March 19, 2004 Supplemental  
Pre-filed Testimony of Randal L. Dobbs, P.E.**

**Objection No. 1**

**Page 2, line 10 to page 3, line 3 and RDL-1**

(a) *Fishtrap objects to the testimony of the witness that the Town has entered into various contracts or agreements with NTMWD for water service (p. 2 (10-11)) and for participation in an investigative study regarding the feasibility of forming a regional wastewater interceptor system and the feasibility of providing regional wastewater service to NTMWD's Panther Creek Wastewater Treatment Plant (p. 2 (21) - p. 3 (3)) for the reason that such testimony is not the best evidence of and is incompetent evidence as to what contracts, if any, the Town has entered into and said contracts and agreements and ordinances authorizing same are not provided as exhibits to the witness' testimony and such testimony constitutes hearsay.*

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(b) *Fishtrap objects to Exhibit RLD-1 and the testimony of the witness as to the Town's membership in the NTMWD's Upper East Fork Interceptor System and that the Town has contracted for wastewater transportation to NTMWD's Wilson Creek Wastewater Treatment Plant (P. 2 (11-20)) because said testimony is irrelevant and not probative of any issue in this case since such contracted services are provided expressly for wastewater generated within "the Wilson Creek Watershed portion of the Town" within Trinity River's East Fork Basin and have no bearing on wastewater generated within the service area requested which is located wholly within the Doe Branch Watershed, which lies within the Trinity River's Elm Fork Basin. Further, the witness' testimony as to what NTMWD's Board will or should do in the future as to the award of any contract is incompetent and speculative and not the best evidence of the Board's resolved intent.*

RESPONSE:

- (a) Mr. Dobbs is the Planning Officer for the North Texas Municipal Water District. Part of Mr. Dobbs's duties is to be aware of the contracts and anticipate and plan for the future. The objection goes to the weight, not the admissibility of the testimony. The testimony is not hearsay as the witness is testifying from personal knowledge. Also, as an expert, the witness may rely on hearsay testimony in formulating any opinions he may have.
- (b) Attachment RLD-1 and the testimony are relevant as it goes directly to Prosper's ability to provide continuous and adequate service. Fishtrap attempts to insert unqualified testimony in its objection. Fishtrap may seek to cross-examine Mr. Dobbs on this testimony. Further, through his experience, Mr. Dobbs may testify regarding what he anticipates the Board to do. As the event testified to has already occurred, Mr. Dobbs will rectify any speculation that Fishtrap illogically contends exists.

**Objection No. 2**

**Page 2, line 5 - line 22 and Exhibits RLD-1 and RLD-2**

(a) *Fishtrap objects to the testimony of the witness (p. 2 (8-13)) as to the contents of the contract Exhibit RLD-1 relative to the Upper East Fork Interceptor for the reasons that:*

- (1) *such testimony is not the best evidence as the contract speaks for itself;*
- (2) *such testimony and contract is irrelevant and have no probative value as to any issue in dispute in this proceeding because the testimony and contracts relate exclusively to the transmission of wastewater generated by the Town within the Wilson Creek Watershed and East Fork Trinity Basin portion of the Town which is not within the service area requested for certification by the Town in this proceeding. Such requested area lies wholly within the Doe Branch Watershed and Trinity Elm Fork Basin.*

(b) *Fishtrap objects to the testimony of the witness (p. 2 (14-22)) as to the contents of the contract Exhibit RLD-2 relative to East Fork Wastewater treatment services for the reasons that:*

- (1) *such testimony is not the best evidence as the contract speaks for itself;*
- (2) *such testimony and exhibit are irrelevant and have no probative value as to any issue in dispute in this proceeding because the testimony and contract relate exclusively to the treatment of wastewater generated by the Town within the Wilson Creek Watershed and East Fork Trinity Basin portion of the Town which is not within the service area requested for certification by the Town in this proceeding. Such requested area lies wholly within the Doe Branch Watershed and Trinity Elm Fork Basin.*

RESPONSE:

- (a) Attachment RLD-1 and the testimony are relevant as it goes directly to Prosper's ability to provide continuous and adequate service. Fishtrap attempts to insert unqualified testimony in its objection. Fishtrap may seek to cross-examine Mr. Dobbs on this testimony. As a representative of the organization that signed the agreement, Mr. Dobbs may testify regarding his knowledge of the Agreement.
- (b) The referenced testimony does not state what Fishtrap asserts it states. The referenced testimony discusses wastewater transportation issues, not wastewater treatment issues. Thus, Prosper cannot respond to Fishtrap's objection.

**Objection No. 3**  
**Page 4, lines 6 - 9**

*Fishtrap objects to the question presented and the answer thereto for the reasons that:*

- (a) *The question is leading;*
- (b) *No predicate is established or foundation laid for presenting the question and response, such as*
  - (i) *present demographic analysis performed by the witness and his qualifications to conduct same;*
  - (ii) *wastewater demand analysis performed;*
  - (iii) *review of Town plans for furnishing such service.*

- (c) *The question is ambiguous, indefinite and vague because it does not specify if the question relates to the Town's existing customer base, projected future customer base within the Town's existing service area or projected future customer base in all areas to be served including the area requested by the Town in this proceeding.*

RESPONSE:

- (a) The question is not leading as it does not suggest a response.
- (b) Mr. Dobbs is a registered professional engineer charged with providing water and wastewater services on a regional basis for one of the largest regional providers in the north Texas area. He is eminently qualified to offer his opinion. A review of Mr. Dobbs resume and work history reveal that he is qualified to offer opinions regarding the ability to provide service. Merely, because Fishtrap speculates that Mr. Dobbs is not qualified, does not make it so. Fishtrap is welcome to cross-examine Mr. Dobbs regarding his opinion.
- (c) An easy review of the testimony reveals that the question is not ambiguous, indefinite, or vague. The totality of the testimony reveals that Mr. Dobbs is offering a qualified opinion regarding Prosper's ability to provide continuous and adequate sewer service.

**Objections to the March 19, 2004 Supplemental  
Pre-filed Testimony of Douglas Mousel**

***Objection No. 1***

***Page 4, line 8-11\****

***Page 5 lines 18-20***

***Page 6, lines 1-4, line 10-13\****

***Page 12, lines 16-18***

***Page 13, lines 1-5, lines 11-14\****

***Page 15, lines 1-8, lines 10-12***

***Page 17, lines 19-21***

***Page 18, lines 1-5, lines 11-14\****

***Page 20, lines 7-15***

***Page 21, lines 1-4***

***Page 23, lines 1-4, lines 11-16, lines 18-20***

*Mr. Mousel was hired by the Town of Prosper as its Administrator in September 2003. The Town's CCN Application, however, was filed in July 2002. In a number of instances, Mr. Mousel offers testimony concerning the truth, accuracy and authorship by unidentified persons with alleged knowledge without any evidence presented that the witness has personal knowledge or the basis upon which he has based his answers. Without establishing such personal knowledge basis for such testimony offered as a predicate and foundation for the information or response requested, said responses are hearsay and inadmissible. Additionally, the testimony marked with an "\*" is vague and ambiguous because it fails to disclose what modifications as generally referenced are made to make the Application responses true and correct, and are also leading.*

RESPONSE:

The documents are government records which Mr. Mousel has authenticated. As the Town Administrator, Mr. Mousel is able to review the Town's records and testify based on his review of the Town's records.

**Objection No. 2**  
**Exhibit DM-2, P. 8, line 7**

*Fishtrap objects to the submission of Exhibit DM-2 as hearsay within hearsay.*

RESPONSE:

The referenced testimony is not hearsay. The referenced exhibit is not hearsay as it is offered merely to meet a regulatory requirement. It is offered solely to correct an administrative error, not to prove the truth of the matter asserted.

**Objection No. 3**  
**Page 8, line 3**

*Fishtrap objects to the testimony of the witness as to what the Town has done as same is incompetent. Evidence of official municipal acts can only be established through the minutes, ordinances and resolutions of the City's governing body, not the testimony of a witness.*

RESPONSE:

As the Town Administrator and the Town's former Planning Director, Mr. Mousel has personal knowledge of whether plats have been approved. Mr. Mousel is competent to provide such testimony.

**Objection No. 4**  
**Page 10, lines 1-12**

*Fishtrap objects to the testimony as to the Town's motive or intent of the Town in seeking certification to the area requested for the reason that such testimony is incompetent. Such may only be evidenced by the official acts reflected in the minutes, ordinances and resolutions of the Town's governing body.*

**RESPONSE:**

As the Town Administrator and the Town's former Planning Director, Mr. Mousel has knowledge of why the Town seeks the area. Additionally, as an expert in planning and municipal affairs, Mr. Mousel can offer an opinion regarding why it is important to seek such territory.

**Objection No. 5**  
**Page 10, lines 16-17**

(a) *Fishtrap objects because the opinion expressed is speculative and incompetent as to what areas the Town may annex in the future.*

(b) *Fishtrap objects to the testimony as to what "most municipalities believe" because same is hearsay and not shown to be within the witness' personal knowledge and for the further reason that what other cities may believe is irrelevant and not probative of any issue in dispute.*

**RESPONSE:**

(a) As the Town Administrator, Mr. Mousel is competent to testify what he believes will ultimately be in the Town's corporate limits. Indeed, such planning is Mr. Mousel's job.

(b) As the Town Administrator and the Town's former Planning Director, Mr. Mousel has knowledge of the importance of providing utility services. He is merely expressing his expert opinion regarding this importance.

**Objection No. 6**  
**Page 16, lines 8-18, DM-5 and DM-6**

(a) *Fishtrap objects to the testimony opining that the Town has adequate wastewater treatment capacity as no predicate has been presented to demonstrate the witness' qualifications and expertise to offer such opinion and the witness has not been shown to possess the specialized knowledge, training, education or experience to offer such opinion.*

(b) *Fishtrap objects to the testimony as to the Town's contracts with NTMWD for wastewater transportation and treatment for the reason that same relates to wastewater generated within the Wilson Creek drainage basin, not the service area requested which lies within the Doe Branch drainage basin, and such testimony and Exhibits DM-5 and DM-6 are irrelevant.*

(c) *Fishtrap objects to the testimony as to negotiations with the City of Frisco without evidence by resolution or ordinances or City Council minutes authorizing same. Such testimony is incompetent evidence of municipal intentions which may only be supplied by authenticated actions of the Town's governing body.*

**RESPONSE:**

- (a) As the Town Administrator, Mr. Mousel is competent to testify regarding the Town's wastewater treatment capacity. As Town Administrator, planning of the future of the Town is his primary responsibility. As such, Mr. Mousel has such knowledge and is competent to present such testimony.
- (b) Although Fishtrap does not indicate its specific legal objection to the testimony, which is reason enough to overrule it, one may understand that Fishtrap objects to the relevancy of the testimony. The Exhibits and the testimony are relevant as it goes directly to Prosper's ability to provide continuous and adequate service. Fishtrap attempts to insert unqualified testimony in its objection. Fishtrap may seek to cross-examine Mr. Mousel on this testimony. The ability and resources of Prosper to provide sewer service is relevant to this proceeding.
- (c) As the Town Administrator, Mr. Mousel is aware and has personal knowledge of discussions with the City of Frisco. Mr. Mousel has offered nothing more than the facts regarding that negotiations have commenced. Such is competent evidence.

**Objection No. 7**

**Page 16, line 23 to page 17 line 3**

*Fishtrap objects to the witness' testimony that the Town has contracted with Frisco and NTMWD to provide wastewater transportation to wastewater treatment plants south of the proposed service area for the reason that such contracts are not in evidence or offered as evidence and the witness' testimony relating to the Town's action is incompetent, is hearsay to this witness and is not the best evidence of any such contract.*



RESPONSE:

As the Town Administrator, Mr. Mousel has knowledge of the contracts and may testify regarding them. Additionally, as an expert in planning and municipal affairs, Mr. Mousel can testify regarding the contracts. As an expert, the witness may refer to documents reviewed as the basis for his expert opinion. It is well settled Texas law that an expert may rely on hearsay as the basis of his opinion. The objection goes to the weight, not admissibility, of the testimony.

**Objection No. 8**  
**Page 17, lines 4 - 6**

*Fishtrap objects to the testimony as same purports to disclose an offer of settlement or compromise which is protected by Rule of Evidence No. 408. Fishtrap further objects on the basis that testimony is not the best evidence, and that such offer was made contingent upon a variety of conditions being included in the agreement which had severe cost implications to Fishtrap and consumers and such testimony is incomplete and subject to the doctrine of optional completeness.*

RESPONSE:

The Town will withdraw the testimony beginning on page 17, line 4 with "In fact, the..." through line 6.

**Objection No. 9**  
**Page 17, lines 8 - 12**

*Fishtrap objects to the testimony of the witness as to other unsupplied contracts the Town may have entered into with NTMWD and Frisco as incompetent and not the best evidence, which would be the contracts themselves.*

RESPONSE:

As the Town Administrator, Mr. Mousel has knowledge of the contracts and may testify regarding them. Additionally, as an expert in planning and municipal affairs, Mr. Mousel can testify regarding the contracts. As an expert, the witness may refer to documents reviewed as the basis for his expert opinion. The objection goes to the weight, not admissibility, of the testimony.

**Objection No. 10**  
**Page 17, lines 14 - 17**

*Fishtrap objects to the witness' opinion for which he has not been shown to possess qualifications or expertise to present.*

**RESPONSE:**

As the Town Administrator, Mr. Mousel has knowledge of the Town's abilities to provide service to potential customers. Indeed, it is part of his job responsibilities to possess such knowledge for planning purposes. As an expert in planning and municipal affairs, Mr. Mousel is competent to provide such testimony. The objection goes to the weight, not admissibility, of the testimony. Fishtrap is welcome to cross-examine the witness regarding his opinion.

**Objection No. 11**  
**Page 19, lines 11 - 18**

*(a) Fishtrap objects to the testimony as to what Prosper may have been advised as hearsay.*

*(b) Fishtrap objects to the testimony of the witness as to the Town's sale of certificate of obligations as incompetent testimony without evidence of the Town Council's Minutes and Resolutions authorizing and approving such sale without such documentation, such testimony is incompetent.*

*(c) Fishtrap objects to the testimony of the witness that "CO money will be spent on extending service" for the reason that such testimony is incompetent as the Town may only speak through its governing body on such issues as evidenced by its official minutes, ordinances and resolutions.*

**RESPONSE:**

(a) As the Town Administrator and an expert in municipal affairs and planning, Mr. Mousel is competent to testify regarding advice from other experts. As an expert, the witness may refer to opinions of other experts as the basis for his expert opinion. It is well settled Texas law that an expert may rely on hearsay as the basis of his opinion. The objection goes to the weight, not admissibility, of the testimony.

(b) As the Town Administrator, Mr. Mousel has knowledge of the sale of the debt instruments. Additionally, as an expert in planning and municipal affairs, Mr. Mousel can testify regarding the debt instruments. As such, the testimony is competent.

- (c) As the Town Administrator, Mr. Mousel has knowledge of the Town's planning and fiscal needs. Indeed, it is part of his job responsibilities to possess such knowledge for planning purposes. As an expert in planning and municipal affairs, Mr. Mousel is competent to provide such testimony. The objection goes to the weight, not admissibility, of the testimony. Fishtrap is welcome to cross-examine the witness regarding his opinion.

**Objection No. 12**  
**Page 25, line 2**

*Fishtrap objects to the witness' opinion offered without predicate as to qualifications or expertise that the "Town has the ability to provide sewer service to the area." The witness has not been shown to have the specialized knowledge, experience, education or training to offer such opinion.*

**RESPONSE:**

As the Town Administrator, Mr. Mousel has knowledge of the Town's abilities to provide service to potential customers. Indeed, it is part of his job responsibilities to possess such knowledge for planning purposes. As an expert in planning and municipal affairs, Mr. Mousel is competent to provide such testimony. The objection goes to the weight, not admissibility, of the testimony. Fishtrap is welcome to cross-examine the witness regarding his opinion.

**Objection No. 13**  
**Page 25, line 2**

*Fishtrap objects to the witness' opinion as to Prosper's wastewater treatment capacity and conclusion that the Town may "best provide service" for the reason that the witness has not been shown to have the specialized knowledge, experience, education or training to offer such opinions and conclusions.*

**RESPONSE:**

The referenced testimony does not state what Fishtrap claims it does and objects to.

**Objection No. 14**  
**Page 25, lines 15 - 18**

*Fishtrap objects to the question as leading and the response as unqualified for the purpose of offering an opinion as to the provision of "continuous and adequate service" under Commission Rules.*

RESPONSE:

The question is not leading as it does not suggest a response. Simply because a question may be answered in the affirmative or in the negative does not make the question leading. Further, Mr. Mousel is an expert and has laid the predicate throughout his testimony for his opinion. As an expert, Mr. Mousel may testify on the ultimate issue. The objection goes to the weight, not admissibility of the testimony. Fishtrap may cross-examine the witness regarding his opinion.

**Objection No. 15**  
**Page 26, lines 5-9**

*Fishtrap objects to the witness' conclusory and opinion response as to the Town's "continuous and adequate service" and the Town's "strong financial position" enabling it to "finance any improvements needed" for the reason that the witness has not been shown to possess either wastewater service or financial expertise, training, specialized knowledge or education to offer such opinions.*

RESPONSE:

The witness is the Town Administrator. As such, he is eminently familiar with the Town's finances and ability to provide service to its customers and potential customers. The witness is giving expert testimony and is entitled to rely on the testimony of other experts as a basis for his opinions. All opinions are conclusory. The witness is simply stating his opinion based on the facts and opinions he has stated previously. The testimony is admissible. His expertise is established through his work history and education.

**Objection No. 16**  
**Page 26, line 11 - 14**

*Fishtrap objects to the question as leading and to the response as failing to show the witness' special knowledge, training, expertise, experience or education upon which to base such opinion.*

RESPONSE:

The question is not leading as it does not suggest a response. Simply because a question may be answered in the affirmative or in the negative does not make the question leading. The witness is the Town Administrator. As such, he is eminently familiar with the Town's ability to provide service safely to the public. The witness is giving expert testimony. The witness is simply stating his opinion based on the facts and opinions he has stated previously. The testimony is admissible. His expertise is established through his work history and education.

**Objections to the August 24, 2004 Supplemental  
Pre-filed Testimony of Douglas Mousel**

**Page 4, lines 5 -6**

*Fishtrap objects to the witness' recitation of sewer customer connections for the reason that same is hearsay to the witness and for which the witness is not shown to have personal knowledge and for the further reason that the table presented is a summary for which the underlying data has not been made available to the parties.*

RESPONSE:

It is without question that Mr. Mousel is an expert in municipal government and city planning. As his resume indicates and he testifies to, Mr. Mousel is a qualified expert to discuss the Town's utility. As the Town Administrator for Prosper, Mr. Mousel has available to him reports upon which he may base his opinion. As Town Administrator, Mr. Mousel is eminently qualified to offer this testimony. As to meter information, the summary is merely intended to assist Your Honor understand the Town's utility. Finally, Fishtrap never requested that they review all meter issuances by the Town. Such arrangements could have been made. Mr. Mousel, in providing the testimony, did not count all meters issued, but relied on a summary provided to him, which was reproduced in the testimony. An expert may offer such testimony. Further it is not offered to prove the truth of the matter asserted but as a correction to a response to the Commission's regulatory requirement.

**Objections to the March 19, 2004 Supplemental  
Pre-filed Testimony of Douglas R. Hartman**

**Objection No. 1  
Page 2, line 15 to line 2**

*Fishtrap objects to Mr. Hartman's testimony because: (1) it is not relevant to the issues set out in 30 TAC §291.101 and §13.241, Texas Water Code regarding the criteria for whether a CCN should be granted; and there is no evidence that the certificate of debt is restricted or related to expenditures unrelated to service for the proposed service area, (2) it violates the best evidence rule because the certificate of debt and resolution approving same is the best evidence regarding the certificate of obligation.*

RESPONSE:

- (1) The testimony is relevant as it goes to the financial ability for Prosper to provide service to its requested service territory. Further, Mr. Mousel testifies in his prefiled testimony that a portion of the proceeds of the bond sale will be used to finance sewer improvements if the CCN in this proceeding is issued. The debt instrument is restricted to certain items, including sewer system improvements. Mr. Hartman may make that clarification on the stand.
- (2) As an expert and one with personal knowledge of the debt issuance, Mr. Hartman may relay the facts of the debt issuance.

**Objection No. 2**  
**Page 3, line 6 to line 9**

*Fishtrap objects to Mr. Hartman's testimony that the "Town Council accepted the low bid . . . and sold 10.5 million of Certificates of Obligation" because said testimony is based upon hearsay and violates the best evidence rule in that the certified copy of the Town Council minutes regarding acceptance of any bid is the best evidence.*

RESPONSE:

As an expert and one with personal knowledge of the debt issuance, Mr. Hartman may relay the facts of the debt issuance. Even if the testimony could be regarded as hearsay, as an expert, Mr. Hartman may rely on hearsay to support his opinion regarding the Town's receipt of a low interest rate.

**Objection No. 3**  
**Page 3, line 13 to line 14**

*Fishtrap objects to Mr. Hartman's opinion testimony that Prosper has the capability to issue debt because it is irrelevant to the issues and criteria set out in 30 TAC §291.101 and §13.241, Texas Water Code regarding the criteria for whether a CCN should be granted and because it fails to satisfy the requirements of E.I. du Pont de Nemours v. Robinson, 923 S.W.2d 549 (Tex. 1995) in that the testimony fails to lay the proper predicate regarding the ability of a public agency to issue debt.*

RESPONSE:

The testimony is directly relevant to whether the Town has the financial capability to provide service to the requested service territory. As an expert, Mr. Hartman may provide an opinion regarding the results of his analysis.

**Objections to the March 19, 2004 Supplemental  
Pre-filed Testimony of Victoria Richards Harkins**

**Objection No. 1  
Page 2, line 5 to line 6**

*Fishtrap objects to Dr. Harkins testifying about and tendering "five letters requesting water and sewer service from Prosper (Attachment VRH-6) because the letters are hearsay in that they are out of court statements offered for the truth of the matter contained in such statements, namely, that third parties are requesting water and sewer service from Prosper.*

**RESPONSE:**

The referenced testimony does not discuss letters requesting service. However, as an expert, Dr. Harkins can rely on such letters to form the basis of her expert opinion.

**Objection No. 2  
Page 2, line 22 to line 23**

*Fishtrap objects to Dr. Harkins testifying about and tendering "a copy of Prosper's annexation map as of February 2004 (Attachment VRH-4) because: (1) the document VRH-4 fails to qualify under Rule 803(8) as an exception to the hearsay rule because it indicates a lack of trustworthiness in that the map contains no wording indicating that this is a map of the Town of Prosper, nor does it contain wording indicating that the document is a public agency record such as a seal, stamp or other wording; (2) the document lacks any self-authentication as required by Rule 902, TRE (3) the document is hearsay in that it contains out of court statement offered for the truth of the matter contained in such statements, namely, that certain designated areas have been annexed or are being annexed into the city of Prosper as of a certain date; (4) the witness has not testified that she has personal knowledge of the matter contained in the document, as required by Rules 602 and 901(b)(1) Texas Rules of Evidence ("TRE").*

**RESPONSE:**

- (1) The map is admissible as Dr. Harkins relies on the map, as an expert, for the basis of her expert testimony. It is well settled Texas law that an expert may rely on hearsay in formulating the expert's opinion. The testimony only discusses the attachment. Thus, the testimony should not be stricken for any alleged failure to authenticate as the attachment has not been offered in the referenced testimony.
- (2) The testimony only discusses the attachment. Thus, the testimony should not be stricken for any alleged failure to authenticate as the attachment has not been offered in the referenced testimony.

- (3) The map is admissible as Dr. Harkins relies on the map, as an expert, for the basis of her expert testimony. It is well settled Texas law that an expert may rely on hearsay in formulating the expert's opinion. The testimony only discusses the attachment. Thus, the testimony should not be stricken for any alleged failure to authenticate as the attachment has not been offered in the referenced testimony.
- (4) Dr. Harkins merely states that this is an attachment to her testimony. The identification of the document occurs elsewhere in her testimony.

**Objections to the August 20, 2004 Supplemental  
Pre-filed Testimony of Victoria Richards Harkins**

**Objection No. 3  
Page 5, line 10 to line 11**

*Fishtrap objects to Dr. Harkins testifying that "Prosper has received voluntary annexations requests . . ." because: (1) said testimony is hearsay in that it contains out of court statements, namely, a request for annexation to the Town of Prosper; and (2) the witness has not established any personal knowledge to so testify as required by Rule 602.*

**RESPONSE:**

- (1) The testimony is admissible as Dr. Harkins relies on the requests for service, as an expert, for the basis of her expert testimony. It is well settled Texas law that an expert may rely on hearsay in formulating the expert's opinion. The testimony is the basis for her opinions expressed later in her testimony.
- (2) As an expert, Dr. Harkins need not rely or testify solely on matters within her personal knowledge. An expert may testify on matters that were reviewed by or made known to her, TRE 703.

**Objection No. 4  
Page 5, line 5 to line 12**

*Fishtrap objects to Dr. Harkins testifying that "Prosper has received . . . numerous request for service for a vast majority of the proposed service area" because: (1) said testimony constitutes hearsay in that such request constitutes out of court statements offered for the truth of the matter contained therein; (2) Dr. Harkins answer is unresponsive to the question. The question posed was "What is Prosper proposing to do in its application?" Prosper is not proposing in its application to annex territory and Dr. Harkins testimony regarding annexations is not responsive to the question.*



RESPONSE:

- (1) Dr. Harkins, as an expert who has reviewed approximately 180 CCN applications, may testify regarding the requests for service as it forms the basis for opinions given later in her testimony.
- (2) The answer is responsive as to what Prosper seeks to do in this Application and why. Dr. Harkins opines that the annexation requests result in the need to seek CCN territory to the west.

**Objection No. 5**  
**Page 5, line 12 to line 13**

*Fishtrap objects to Dr. Harkins testifying that "Prosper . . . has annexed 5 tracts of land in the Proposed Service Territory" because: (1) such testimony violates the best evidence rule and the best evidence of said alleged annexations are the annexation ordinances themselves; (2) said testimony lacks any predicate demonstrating personal knowledge, as required by Rule 602; (3) said testimony constitutes hearsay because Dr. Harkins obviously cannot know that Prosper "has annexed" territory unless she learned this from public records which have not been introduced or unless this was communicated to her by a third party.*

RESPONSE:

- (1) The testimony is admissible because as an expert Dr. Harkins can testify regarding the basis for her opinion. The annexations are one component that lead to her conclusions recited later in her testimony.
- (2) As an expert, Dr. Harkins need not rely or testify solely on matters within her personal knowledge. An expert may testify on matters that were reviewed by or made known to her, TRE 703.
- (3) The testimony is admissible because as an expert Dr. Harkins can testify regarding the basis for her opinion. The annexations are one component that lead to her conclusions recited later in her testimony. It is well settled Texas law that an expert may rely on hearsay in formulating the expert's opinion.

**Objection No. 6**  
**Page 5, line 13 to line 15**

*Fishtrap objects to Dr. Harkins testify or tendering Attachment VRH-9 because: (1) the document VRH-9 fails to qualify under Rule 803(8) as an exception to the hearsay rule because it indicates a lack of trustworthiness in that the map is vague and confusing, and it is impossible to ascertain from a review of the map where the Town of Prosper is located, what areas are being annexed, when those areas were annexed, etc.; (2) the map contains no wording indicating that the document is a public agency record such as a seal, stamp or other wording; (3) the document lacks any self-authentication as required by Rule 902, TRE (4) the document is hearsay in that it contains out of court statement offered for the truth of the matter contained in such statements, namely, that certain designated areas have been annexed or are being annexed into the city of Prosper as of a certain date; (5) the witness has not testified that she has personal knowledge of the matter contained in the document, as required by Rules 602 and 901(b)(1) Texas Rules of Evidence ("TRE"); (6) the map violates the best evidence rule because the best evidence of annexation are the annexation ordinances of the Town of Prosper which have not been tendered into evidence.*

**RESPONSE:**

- (1) The map is not vague and confusing as Dr. Harkins testifies that five tracts were annexed in the Proposed Service Territory and the map shows the five tracts. Nothing could be more clear.
- (2) Dr. Harkins's Attachment VRH-9 merely supports her opinions. It is not offered to prove the truth of the matter asserted, but forms the basis for her opinion.
- (3) The document has been authenticated as Dr. Harkins identifies the document. TRE 901 (b)(1).
- (4) Dr. Harkins's Attachment VRH-9 merely supports her opinions. It is not offered to prove the truth of the matter asserted, but forms the basis for her opinion.
- (5) As an expert, Dr. Harkins is not required to have personal knowledge in order to provide testimony, TRE 703.
- (6) As an expert, Dr. Harkins is qualified to provide testimony that form the basis of her opinions. Such is the type of testimony proffered. The Attachment is admissible.

**Objections to the March 19, 2004 Supplemental  
Pre-filed Testimony of Victoria Richards Harkins**

**Objection No. 7  
Page 4, line 19 to line 21**

*Fishtrap objects to Dr. Harkins testimony beginning with the third sentence line 19 and ending with that same sentence on line 21 because of the reasons set out in Objection No. 2 above regarding Attachment VRH-4, which is the "annexation" map.*

**RESPONSE:**

- (1) The map is admissible as Dr. Harkins relies on the map, as an expert, for the basis of her expert testimony. It is well settled Texas law that an expert may rely on hearsay in formulating the expert's opinion. The testimony only discusses the attachment. Thus, the testimony should not be stricken for any alleged failure to authenticate as the exhibit has not been offered in the referenced testimony.
- (2) The document has been authenticated as Dr. Harkins identifies the document. TRE 901 (b)(1).
- (3) The map is admissible as Dr. Harkins relies on the map, as an expert, for the basis of her expert testimony. It is well settled Texas law that an expert may rely on hearsay in formulating the expert's opinion. The testimony only discusses the attachment. Thus, the testimony should not be stricken for any alleged failure to authenticate as the attachment has not been offered in the referenced testimony.
- (4) As an expert, Dr. Harkins need not rely or testify solely on matters within her personal knowledge. An expert may testify on matters that were reviewed by or made known to her, TRE 703.

**Objection No. 8  
Page 4, line 21 to line 23**

*Fishtrap objects to Dr. Harkins testimony beginning with the sentence starting on line 21 and ending the same sentence on line 23 for the same reasons set out in Objection No. 1, regarding Attachment VRH-6 which consists of the five letters requesting water and sewer service.*

**RESPONSE:**

The testimony is admissible because as an expert Dr. Harkins can testify regarding the basis for her opinion. The letters requesting service are only one component that leads to her conclusions recited later in her testimony. It is well settled Texas law that an expert may rely on hearsay in formulating the expert's opinion. TRE 703.

**Objection No. 9**  
**Page 5, line 5 to line 12**

*Fishtrap objects to Dr. Harkins testimony regarding Texas Water Development Board population projections because: (1) such testimony is not relevant, because the proposed service area is not in the Town of Prosper, and these population projections are for the Town of Prosper, not the service area; (2) the population projections for the year 2050 are irrelevant and speculative to the issues before this court*

**RESPONSE:**

- (1) The testimony is relevant as it shows the growth Prosper is planning for and goes to the ability to provide continuous and adequate service. It is only logical that growth will come by way of annexations that have previously been discussed by Dr. Harkins and Mr. Mousel.
- (2) Dr. Harkins, as an expert, may rely on population projections in order to formulate her opinions that are expressed later in her testimony. As such, the testimony is admissible.

**Objections to the August 20, 2004 Supplemental  
Pre-filed Testimony of Victoria Richards Harkins**

**Objection No. 10**  
**Page 6, line 3**

*Fishtrap objects to the first sentence on page 6 where Dr. Harkins testifies that "There is a need for sewer service in the proposed area" because no predicate has been laid for Dr. Harkins to express such an opinion. The only predicate laid consists of five short letters which have been objected to as hearsay (see Objection No. 1) and a two page summary of population growths for various Texas cities issued by the Texas Water Development Board. Such a predicate falls far short of the requirements of E.I. du Pont de Nemours v. Robinson, 923 S.W.2d 549 (Tex. 1995). Dr. Harkins is clearly being presented as an expert witness to render her opinion on the need for Prosper's sewer CCN to be extended to a new large area, including Fishtrap's property, and the burden is on the party offering the evidence to establish the reliability underlying such scientific evidence. Robinson at 557.*

RESPONSE:

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. She has stated that there is a need for service in the area and supported her opinion through competent testimony. Fishtrap mischaracterizes her testimony. However, the fact remains that Dr. Harkins has adequately laid out her qualifications and the basis for offering her expert opinion. Fishtrap is welcome to cross-examine Dr. Harkins regarding the foundation for her testimony.

**Objection No. 10**  
**Page 6, line 3 to line 5**

*Fishtrap objects to Dr. Harkins testimony regarding Attachment VRH-9 for the same reasons set out in Objection No. 6 above and because the best evidence of Prosper's annexations are the relevant Prosper annexation ordinances.*

RESPONSE:

- (1) The map is not vague and confusing as Dr. Harkins testifies that five tracts were annexed in the Proposed Service Territory and the map shows the five tracts. Nothing could be more clear.
- (2) Dr. Harkins's Attachment VRH-9 merely supports her opinions. It is not offered to prove the truth of the matter asserted, but forms the basis for her opinion.
- (3) The document has been authenticated as Dr. Harkins identifies the document. TRE 901 (b)(1).
- (4) Dr. Harkins's Attachment VRH-9 merely supports her opinions. It is not offered to prove the truth of the matter asserted, but forms the basis for her opinion.
- (5) As an expert, Dr. Harkins is not required to have personal knowledge in order to provide testimony, TRE 703.
- (6) As an expert, Dr. Harkins is qualified to provide testimony that form the basis of her opinions. Such is the type of testimony proffered. The Attachment is admissible.

**Objection No. 10**  
**Page 6, line 5 to line 8**

*Fishtrap objects to Dr. Harkins testimony that one of the reasons for supporting Prosper's application for a sewer CCN in the proposed are is the need for sewer service for the Fishtrap 107 acre development, because Dr. Harkins has not laid a predicate that she has personal knowledge regarding the Fishtrap property other than that she is aware that a final subdivision plat has been approved.*

**RESPONSE:**

As an expert, Dr. Harkins is not required to have personal knowledge in order to provide testimony, TRE 703. As an expert, Dr. Harkins is qualified to provide testimony that forms the basis of her opinions. Such is the type of testimony proffered.

**Objections to the March 19, 2004 Supplemental  
Pre-filed Testimony of Victoria Richards Harkins**

**Objection No. 11**  
**Page 6, line1 to Page 7, line 2**

*Fishtrap objects to Dr. Harkins entire testimony in her response to the question at the bottom of page 5 because it lacks a proper predicate and fails to comply with Robinson, supra. The question asks what will be the effect of the granting of Prosper's sewer CCN application on Prosper and the other utilities serving the proximate area. Dr. Harkins' response is that it will have no effect on the other utilities. Dr. Harkins has failed to lay any predicate for rendering such an opinion in that she has failed to demonstrate any familiarity with: (1) the facilities in place or planned by these other service providers; (2) the number or location of consumers in the area; and, (3) the financial condition of or consequences to the other service providers in the area, as mandated by §291.102 of the TCEQ Regulations (Title 30 of the Administrative Code) and §13.241 of the Texas Water Code.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. She has stated that Prosper's application will have no effect on the other utilities in the proximate area and supported her opinion through competent testimony. However, the fact remains that Dr. Harkins has adequately laid out her qualifications and the basis for offering her expert opinion. Fishtrap is welcome to cross-examine Dr. Harkins regarding the foundation for her testimony. The objection goes to the weight, not admissibility, of the testimony.

**Objection No. 12**  
**Page 7, line 12 to 19**

*Fishtrap objects to Dr. Harkins' testimony regarding its ability to serve the proposed service area, because she has not laid any predicate. Dr. Harkins has testified that the present wastewater treatment plant has the capacity to handle up to 4900 additional homes, but there has been no predicate laid that the proposed service area can be treated by the present wastewater treatment plant or that it is financially feasible to use the present wastewater treatment plant. A proper predicate must first be laid down as to how the proposed service area can be serviced from both engineering and financial considerations.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. She is also a registered professional engineer. Dr. Harkins has adequately laid out her qualifications and the basis for offering her expert opinion. Fishtrap is welcome to cross-examine Dr. Harkins regarding the foundation for her testimony. The objection goes to the weight, not admissibility, of the testimony.

**Objection No. 13**  
**Page 7, line 19 to line 21**

*Fishtrap objects to Dr. Harkins testimony that "Prosper has executed contracts for additional wastewater treatment services from NTMWD" because such testimony is hearsay, because it violates the best evidence rule in that the contracts themselves are the best evidence of the contracts, and because it is irrelevant if the contracts do not involve service for the proposed area.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. As an expert, Dr. Harkins may rely on hearsay to form the basis of her opinions. Further, the testimony is relevant as it goes directly to Prosper's ability to provide sewer service.

**Objection No. 14**  
**Page 7, line 21 to page 8, line 1**

*Fishtrap objects to Dr. Harkins testimony that "Prosper has retained professional engineering services for design and permitting of the new addition to its wastewater treatment plant as well as design of collection lines throughout the Proposed Service Territory . . ." because such testimony is hearsay and because such testimony violates the best evidence rule. Any retainer between Prosper and an engineering firm has undoubtedly been reduced to a written agreement, containing a description of the design services being retained, and the agreement should be tendered into evidence as the proper evidence for design services, not Dr. Harkins hearsay testimony.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. As an expert, Dr. Harkins may rely on hearsay to form the basis of her opinions. Dr. Harkins may provide the testimony as it lays the foundation for her later expressed opinions.

**Objection No. 15**  
**Page 8, line 16 to line 18**

*Fishtrap objects to Dr. Harkins testimony that Prosper has executed a contract with NTMWD because such testimony is hearsay and violates the best evidence rule. If Prosper has executed a contract with NTMWD, the written contract should be introduced because it is the best evidence of the terms and conditions of any such agreement.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. As an expert, Dr. Harkins may rely on hearsay to form the basis of her opinions. Dr. Harkins may provide the testimony as it lays the foundation for her later expressed opinions.



**Objection No. 16**  
**Page 9, line 5 to line 6**

*Fishtrap objects to Dr. Harkins testimony that "sewer service will now be available" in the proposed service area because there is no predicate for her testimony and because such testimony is based on hearsay and is speculative. The only basis to render such an opinion is the action of the Town of Prosper to approve contracts for the design and construction of, or the purchase of, sewer service, and there has been no evidence that the town has entered into such contracts. Dr. Hawkins testimony to this effect is based upon hearsay and is speculative. If Prosper has executed a contract with engineers or with a service provider, the written contract should be introduced because it is the best evidence of the terms and conditions of any such agreement.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. As an expert, Dr. Harkins may rely on hearsay to form the basis of her opinions. Dr. Harkins may provide the testimony as it lays the foundation for her later expressed opinions.

**Objection No. 17**  
**Page 9, line 8 to line 10**

*Fishtrap objects to Dr. Harkins testifying that "the majority of the Proposed Service Territory is currently in the annexation process to become included within the corporate limits." Such testimony is opinion testimony and there has been no predicate laid for such opinion testimony. Furthermore, the term "currently in the annexation process" evidences a lack of understanding regarding the annexation process for general law cities, which cannot annex without the consent of landowners and which annexation must be done by city council adoption of an ordinance. Until land is annexed, it is not a part of the city and may never become a part of the city.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. Dr. Harkins may provide the testimony as it lays the foundation for her later expressed opinions. Further, Fishtrap's objection demonstrates a lack of understanding of the prefiled testimony in this case as Mr. Mousel in his prefiled testimony states that the annexations are as a result of voluntary annexations. If Fishtrap believes that Dr. Harkins does not understand this, then it may cross-examine her regarding the annexations. The objection goes to the weight, not admissibility, of the testimony.

**Objection No. 18**  
**Page 9, line 12 to line16**

*Fishtrap objects to Dr. Hawkins testifying "costs for sewer service will also be less with Prosper as the sewer service provider" because there is no predicate laid for such opinion testimony. Fishtrap objects to Dr. Hawkins testimony regarding the "current" tap fees and monthly rates for Prosper and for Mustang SUD, because the current fees are not relevant because there is no basis to believe that the present tap fee or monthly service rates for either Prosper and Mustang SUD would be the same for the new proposed service area. The new proposed service area is several miles away from the Town of Prosper's current active service area and it is unreasonable for Dr. Hawkins to assume, without some basis spelled out, why the current fees would be the charge for service in the proposed service area.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. Dr. Harkins may provide the testimony as it lays the foundation for her later expressed opinions. She has stated that Prosper's application will have no effect on the other utilities in the proximate area and supported her opinion through competent testimony. If Dr. Harkins's testimony contains unreasonable assumptions, as asserted, then Fishtrap may cross-examine Dr. Harkins regarding her assumptions. However, the fact remains that Dr. Harkins has adequately laid out her qualifications and the basis for offering her expert opinion. The objection goes to the weight, not admissibility, of the testimony.

**Objections to the August 20, 2004 Supplemental  
Pre-filed Testimony of Victoria Richards Harkins**

**Objection No. 19**  
**Page 7, line 15 to line16**

*Fishtrap objects to Dr. Harkins testimony that five annexations in the Proposed Service Area have been completed because such testimony is based upon hearsay and violates the best evidence rule. Any annexation ordinances passed by Prosper for annexations in the Proposed Service Area are the best evidence of said annexations.*

**RESPONSE:**

The testimony is admissible because as an expert Dr. Harkins can testify regarding the basis for her opinion. The letters requesting service are but one component that lead to her conclusions recited later in her testimony. It is well settled Texas law that an expert may rely on hearsay in formulated the expert's opinion, TRE 703.

**Objections to the March 19, 2004 Supplemental  
Pre-filed Testimony of Victoria Richards Harkins**

**Objection No. 20  
Page 10, line 7 to line 9**

*Fishtrap objects to Dr. Harkin testifying that "the majority of the Proposed Service Area has or will be annexed into Prosper's corporate limits" because such testimony regarding what will be annexed into Prosper's corporate limits is wholly speculative and because her testimony regarding which land in the service area has actually been annexed is hearsay and violates the best evidence rule. If land in the service areas has been annexed, the best evidence of such annexations are the annexation ordinances adopted by Prosper city council.*

**RESPONSE:**

The testimony is admissible because, as an expert, Dr. Harkins can testify regarding the basis for her opinion. As an expert, Dr. Harkins can, based on her experience, opine that land will likely be annexed into the Town of Prosper. As such, the evidence is competent and should not be stricken.

**Objection No. 21  
Page 10, line 10 to line 11**

*Prosper objects to Dr. Hawkins testimony that "Prosper has executed contracts for 4.96 MGD wholesale wastewater treatment service from NTMWD" because such testimony is hearsay and violates the best evidence rule. Any such contract between Prosper and NTMWD is the best evidence of the contract. Moreover, if such contract does exist between Prosper and NTMWD, it does not necessarily mean such contract is for service in the Proposed Service Area and therefore such testimony is also irrelevant.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. Dr. Harkins may provide the testimony as it lays the foundation for her later expressed opinions. As such, the testimony is competent. The testimony is relevant as it goes to Prosper's ability to provide service. The objection goes to the weight, not admissibility, of the testimony.

**Objection No.22**  
**Page 10, line 16 to page 11, line 2**

*Fishtrap objects to Dr. Harkins testimony that "Mustang SUD has not demonstrated it has the capability to serve the entire Proposed Service Territory as evidenced in its water and sewer CCN amendment application" because no predicate has been laid for such opinion testimony. Dr. Harkins has not testified that she is familiar with (1) Mustang SUD's present facilities; (2) its contract arrangements with the Upper Trinity Regional Water District ("Upper Trinity") to purchase utility services; (3) Upper Trinity's capabilities now or in the near future to provide utility services to Mustang in order to enable Mustang to provide utility services to Fishtrap or the proposed service area. All of these items are necessary requisites to establish a predicate for rendering an opinion regarding Mustang SUD's capability to render service to the proposed service area or to Fishtrap's property.*

**RESPONSE:**

Although Prosper does not agree with the assertions made by Fishtrap regarding Dr. Harkins's qualifications to provide the testimony, Prosper will withdraw the testimony as it is no longer applicable because of Mustang Special Utility District has withdrawn the application she references. Further, Prosper will withdraw the testimony appearing on page 10, line 12 beginning with "Mustang SUD has..." and ending on line 14 with "...Service Territory." Instead, on the stand, Dr. Harkins will modify her testimony to state that Mustang Special Utility District has joined the other utilities in the proximate area that are not participating in this proceeding.

**Objection No. 23**  
**Page 12, line 5 to line 12**

*Fishtrap objects to Dr. Harkins opinion testimony because no proper predicate has been laid to support her opinion testimony in that she has not testified to any familiarity that she has regarding the capability of Upper Trinity to provide utility service to Mustang to enable it to service the proposed service area, nor has she testified regarding the comparative convenience, cost and availability of service between Upper Trinity and Mustang as compared to Prosper and NTMWD, all of which is mandated by 30 TAC §291.102 and §13.241 et seq. of the Texas Water Code.*

**RESPONSE:**

Dr. Harkins is an expert in the CCN arena as she has reviewed approximately 180 CCN cases. Dr. Harkins may provide the testimony as she laid the predicate for her opinion throughout her testimony. As such, the testimony is competent. If Fishtrap believes that Dr. Harkins's testimony is in error, then it may cross-examine her regarding her opinions and foundation thereof. However, the testimony is not incompetent merely because Fishtrap states it is. The objection goes to the weight, not admissibility, of the testimony.

**CONCLUSION**

Prosper respectfully requests that Your Honor overrule the objections filed by Fishtrap. Prosper also respectfully requests any further relief to which it has shown itself to be justly entitled.

Respectfully submitted,

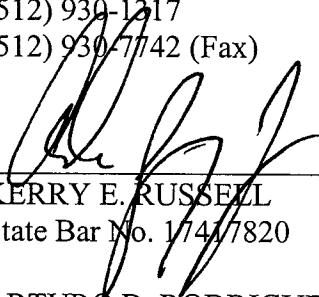
**RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.**

102 West Morrow, Suite 103

Georgetown, Texas 78626

(512) 930-1217

(512) 930-7742 (Fax)



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KERRY E. RUSSELL

State Bar No. 17417820

ARTURO D. RODRIGUEZ, JR.

State Bar No. 00791551

**ATTORNEYS FOR THE TOWN OF PROSPER,  
TEXAS**

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December 2004, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following:

**State Office of Administrative Hearings**

Honorable James Norman  
Administrative Law Judge  
300 West 15th Street, Suite 502  
P.O. Box 13025  
Austin, Texas 78711-3025  
Fax: 512/ 475-4994

**Public Interest Counsel**

Mr. Blas Coy, Attorney  
Office of the Public Interest Counsel  
TCEQ - MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 512/ 239-6377

**Executive Director of the TCEQ**

Mr. Geoffrey Kirschbaum  
Environmental Law Division  
TCEQ - MC 173  
P.O. Box 13087  
Austin, TX 78711-3087  
Fax: 512/ 239-0606

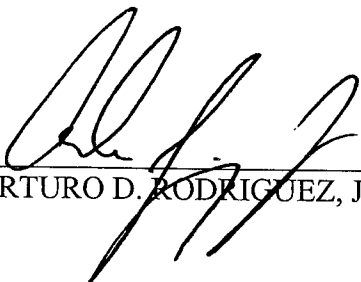
**Fishtrap Properties & Glenbrook Estates**

Mr. Sal Levatino  
1524 S. IH 35, Suite 234  
Austin, Texas 78746  
Fax: 512/ 482-0051

Mr. Skip Newsom  
Fisher & Newsom, P.C.  
3724 Jefferson Street, Suite 210  
Austin, Texas 78731  
Fax: 512/ 477-2860

**Docket Clerk**

Office of the Chief Clerk  
TCEQ - MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: 512/ 239-3311

  
ARTURO D. RODRIGUEZ, JR.