

**Objections to the Prefiled Testimony of Victoria Richards Harkins**

**Objection No. 1  
Page 8, lines 16 to line 20**

Fishtrap objects to Dr. Harkins' testifying regarding a need for additional service in the requested area, because no predicate has been laid for such testimony. Dr. Harkins is being requested to render an opinion, and she has not testified (1) that she is qualified to render such an opinion, (2) what would be the basis for such an opinion or what data she has reviewed, or (3) what methodology she has utilized in formulating an opinion prior to testifying.

**Objection No. 2  
Page 8, line 21 to page 9, line 7**

Fishtrap objects to Dr. Harkins testimony regarding a need for service outside the proposed or requested service area, i.e., those areas removed from the proposed service area such as the land owned by Binary Investments, because it is irrelevant to the issue of whether there is a need for service in the proposed service area. Fishtrap objects to Dr. Harkins testifying regarding Prosper having received eleven plat requests "to the west of the town indicating an increase in growth to the west of Prosper" for the following reasons: (1) the alleged plat request is hearsay evidence, (2) testimony about plat requests is irrelevant because there is no evidence that the alleged plat requests "to the west of town" are located in the proposed or requested service area, because there are significant areas to the "west of town" which are not located in the proposed service area, and (3) testimony concerning plat requests are irrelevant because a plat request is merely a request that a tract of land be approved for subdivision and it is not requests for utility service and may never lead into a request for utility service.

**Objection No. 3**  
**Page 10, lines 1-3**

Fishtrap objects to Dr. Harkins testimony regarding Prosper's having "a good relationship with NTMWD" because (1) she has not testified that she has personal knowledge regarding such a relationship, and such testimony without personal knowledge is based upon hearsay.

**Objection No. 4**  
**Page 10, lines 1-3**

Fishtrap objects to Dr. Harkins testimony that Prosper "will soon enter into contracts for obtaining wholesale sewer service for portions of the Proposed Territory" because (1) such testimony is speculative, for the reason that such a decision requires a majority vote of the respective governing bodies of both Prosper and North Texas Municipal Water District, and until such a vote is taken, no one can predict what the outcome will be, and (2) the terms of any contract that may be entered into between Prosper and North Texas Municipal Water District are yet to be negotiated and/or agreed upon, and Dr. Harkins' testimony regarding the future terms, provisions and conditions of any such contract are wholly speculative.

**Objection No. 5**  
**Page 10, lines 5 - 20**

Fishtrap objects to Dr. Harkins' testimony regarding Prosper's ability to adequately provide sewer service to the proposed service area on the following grounds: first, it is unresponsive since the question concerned the ability of Prosper to provide wastewater service to the requested or proposed service area and Dr. Harkins' response deals with the capacity of the Town of Prosper existing wastewater treatment plant for

which there is no evidence to support that it will be used to treat effluent from the proposed or requested service area; and, second, there is no predicate to support Dr. Harkins testimony that "Prosper has retained Hunter Associates Texas, Ltd for design and permitting of ... collection lines throughout the Proposed Service Territory..." and further such testimony regarding Hunter Associates being retained to design a collection system for the proposed service area is hearsay.

**Objection No. 6**  
**Page 10, lines 14-17**

Fishtrap objects to Dr. Harkins testifying that "Prosper has retained Hunter Associates Texas, Ltd. for design and permitting of the new addition to the wastewater plant as well as design of collection lines throughout the Proposed Service Territory" on grounds that such testimony is obviously based upon hearsay and not personal knowledge, nor has Dr. Harkins testified as to how she knows that Prosper has retained, if it has so retained, Hunter Associates Texas, Ltd. for the purposes for which she has so testified. In fact, the testimony of Travis Roberts, an engineer for Hunter Associates who has responsibility for work with Prosper, has testified in deposition that the firm has not been retained to design collection lines and that such a proposal to transport wastewater from the Proposed Service Area would be "impractical."

**Objection No. 7**  
**Page 10, lines 18 to 20**

Fishtrap objects to Dr. Harkins' testimony that "Prosper will soon enter into contracts for obtaining wastewater treatment service from NTMWD (North Texas Water Municipal District, parenthetical added) for additional wastewater treatment capacity" on

grounds that such testimony is not predicated on personal knowledge, that it is hearsay testimony, and that it is speculative as to whether Prosper and NTWMD will enter into any contracts regarding wastewater treatment capacity. If the two parties ever enter into such agreements, then the contracts themselves can be introduced into evidence, but until then, it is improper for witnesses to engage in such speculative testimony.

**Objection No. 8**  
**Page 11, lines 1 to 10**

Fishtrap objects to Dr. Harkins testimony that "sewer service will be available in the Proposed Service Territory" if the Amendment to Sewer CCN No. 20888 is granted to Prosper on grounds that such testimony is speculative and made without proper predicate. The Proposed Service Territory is today without any wastewater service, a fact not disputed by any party to these proceedings. Providing wastewater service does not depend on just the granting a certificate of convenience and necessity to Prosper, but also the installation of and financing for a wastewater infrastructure, which may consist of, among other things, collection lines, lift stations, and wastewater treatment plants. Dr. Harkins has provided no testimony, nor has any other witness, that such a system has been designed or that it has been approved or denied by the proper governmental authorities, including Prosper, or that adequate financing has been decided upon, put in place and authorized by the proper parties, whether it be by the governing bodies of the respective parties or the voters if so required. Dr. Harkins assumption that these matters will occur is the rankest sort of speculation and whether these matters occur depends upon what the proper bodies decide, if they should so decide, in the future.

**Objection No. 9**  
**Page 11, lines 12 to 16**

Fishtrap objects to the testimony of Dr. Harkins because there is no predicate laid for rendering such an opinion and because it is speculative that just because a CCN is granted, wastewater service will automatically follow. Granting the CCN amendment application will have no effect on sewer service. Only the installation of a wastewater treatment infrastructure will "improve sewer service" and that depends upon a host of decisions that must be made in the future by various parties involving decisions regarding financing, design, construction, schedules, etc. When a sewer or wastewater service system will be put in place is wholly speculative, and Dr. Harkins has no basis for speculating on when or if ever such a system will ever be installed.

**Objection No. 8**  
**Page 12, lines 2 to 4**

Fishtrap objects to Dr. Harkins' testimony that Prosper has entered into contract negotiations with NTWMD for wholesale wastewater treatment, because such testimony is clearly hearsay testimony. Dr. Harkins has provided no testimony showing she has personal knowledge of this fact, and her only basis for so testifying is based upon hearsay testimony.

**Objection No. 9**  
**Page 12, line 18 to Page 13, line 4**

Fishtrap objects to Dr. Harkins testimony that Prosper "can provide continuous and adequate service to the Proposed Service Territory" because at present Prosper has no wastewater service infrastructure whatsoever in place in the Proposed Service Territory, or has taken steps involving a financial and contractual commitment enabling it

to install wastewater service infrastructure which would enable it to provide wastewater service to the Proposed Service Territory. Further, Fishtrap objects to this testimony because it is not based upon personal knowledge nor any investigation conducted by Dr. Harkins. Dr. Harkins has not testified that she has made an engineering study of the Proposed Service Territory to determine what infrastructure is in place or would be required to put in place, nor has she testified that others have performed such a study to determine what infrastructure is in place or required to be put in place. Finally, Dr. Harkins has not testified what steps Prosper has taken to provide wastewater service to the proposed service area to what steps Prosper has put in motion that would result in wastewater service to the proposed service area. Dr. Harkins testimony regarding her recommendation is based upon speculation that contracts will be executed, that designs will be performed, that construction will occur, and that financial commitments will be made, all of which are matters which must be voted upon and approved by the town council of Prosper, and Dr. Harkins' testimony that these events will occur is unfounded speculation upon her part.

**Objections to the Pre-filed Testimony of Brian David Dickey**

**Objection No. 1**

**Page 4, lines 24-26**

Fishtrap objects to Mr. Dickey's characterization of Dr. Harkins' prefiled testimony that Prosper has received eleven plat requests in the proposed area. Dr. Harkins' prefiled testimony (page 8, line 25 to page 9, line 2) was that Prosper "had received over eleven plat requests to the west of the town indicating an increase in growth to the west of Prosper." There are large areas of undeveloped land west of

Prosper which are not in the proposed area, and Dr. Harkins' testimony did not indicate that these plat requests were in the proposed area, and thus Mr. Dickey has mischaracterized Dr. Harkins' testimony. Second, a plat request is not a request for wastewater service; it is only a request that a tract of land be approved for subdivision into two or more tracts. It is common knowledge that many tracts of land are subdivided without any requests for service ever being made, and Mr. Dickey has no basis for testifying that a plat request is evidence of a request for service.

**Objection No. 2**  
**Page 5, lines 18 to 25**

Fishtrap objects to Mr. Dickey's testimony on grounds that it is not responsive. The question, beginning on line 18 of page 5 was the ability of the applicant to provide service. Obviously, the ability refers to the ability to provide service to the proposed area. Mr. Dickey does not answer this question, because he merely states that the wastewater treatment plant in Prosper has excess capacity. He offers no testimony as to how the effluent, or wastewater, is to be transported from the proposed service area to the wastewater treatment plant located in Prosper. This is the crux of the case. There are no wastewater transmission lines in the proposed area, none under construction, none under design, no financing in place to pay for such lines, no governmental action taken to put such a system in place. Mr. Dickey's testimony is unresponsive to the question and misleading. Finally, Prosper has indicated through Ms. Finley's prefiled testimony that it has no plans to utilize its wastewater treatment plant located in Prosper to treat wastewater from the proposed area. (See Jennifer D. Finley Prefiled Testimony, page 14, lines 18-22

**Objection No. 3**  
**Page 6, lines 1 and 2**

Further, Fishtrap objects to Mr. Dickey's testimony regarding Prosper "negotiating a contract with North Texas Municipal Water District to provide wastewater treatment capacity" because such testimony is speculative and hearsay. Mr. Dickey has not testified that he is a party to any alleged negotiations, and thus his only knowledge of any alleged negotiations is based upon out of court statements, the classic definition of hearsay. Whether NTMWD and the Town of Prosper ever enter into a contract regarding the furnishing of wastewater services to the proposed service area is a matter with many contingencies that must be satisfied or overcome and is dependent upon approval of at least two governmental bodies, NTMWD and Prosper.

**Objections to the Prefiled Testimony of Tammy Holguin-Benter**

**Objection No. 1**  
**Page 4, lines 98 to 100**

Fishtrap objects to Ms. Holguin-Benter's testimony that Prosper is already providing service to the adjacent area. There is no predicate for her testimony, no showing that she has personal knowledge that Prosper is providing service to the adjacent area, and nothing in the record upon which Ms. Holguin-Benter can make such a statement. In fact, all the relevant deposition testimony is to the contrary, that a large portion of territory west of Prosper, but east of the proposed service area, is receiving no service from the Town of Prosper. In other words, the area immediately adjacent to the proposed service area is receiving no wastewater service from Prosper.



**Objection No. 2**  
**Page 4, line 100 to page 5, lines 102**

Fishtrap objects to Ms. Holguin-Benter's testimony that "Prosper proposes to contract with NTMWD. . .for services to portions of the requested area. . ." on grounds that such testimony is without predicate, is hearsay and is speculative. No such contract has been proffered as part of production request, no party has testified that there is a contract, no party or witness has testified that they are a party to negotiations for a contract and whether a contract will ever be executed remains to be seen, as well as the final terms, provisions and conditions of the contract.

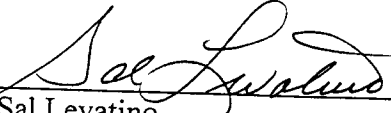
**Objection No. 3**  
**Page 6, lines 125-126**

Fishtrap objects to Ms. Holguin-Benter's testimony that "Prosper is currently providing water and sewer service to the adjacent area" because no predicate has been laid to show that Ms. Holguin-Benter has knowledge of such service; further, all the deposition testimony shows that Prosper is providing service to the east of its wastewater treatment plant, located near the town's historic area and that there are significant areas immediately west of the wastewater treatment plan, which are not receiving wastewater service; in other words, none of the land immediately adjacent to the east of the proposed service area is receiving wastewater treatment service. Finally, all of the evidence in the

record reflects that Prosper has no intention of providing wastewater service from its own wastewater treatment plant. See Jennifer D. Finley Prefiled Testimony, page 14, lines 18 to 22.

Respectfully submitted,

Law Office of Sal Levatino  
1524 South IH-35, Suite 234  
Austin, Texas 78704  
(512)474-4462; (512)482-0051 (Fax)

By:   
Sal Levatino  
State Bar #12245000

ATTORNEY FOR FISHTRAP  
PROPERTIES, LLP AND GLENBROOK  
WATER SUPPLY

# CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served on the following persons by hand delivery and/or fax and/or 1<sup>st</sup> class USPS mail, on the 9<sup>th</sup> day of September, 2003.

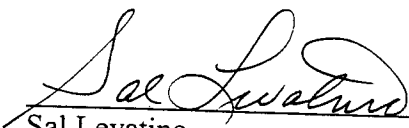
Judge James Norman  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025  
FAX 475-4994

Kerry Russell  
Russell, Moorman & Rodriguez, LLP  
102 W. Morrow, Suite 103  
Georgetown, Texas 78626  
Fax 864-7744

Blas Coy, Jr.  
Public Interest Counsel  
TCEQ  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
FAX 239-6377

Lara Nehman  
Sheridan Gilkerson  
Environmental Law Division  
TCEQ  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
Fax 239-0606

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

  
Sal Levatino



**FISHER & NEWSOM, P.C.**

ATTORNEYS AT LAW

3724 JEFFERSON STREET, SUITE 210  
AUSTIN, TEXAS 78731  
(512) 477-4121  
FAX (512) 477-2860**FACSIMILE TRANSMITTAL**

TO	TELEPHONE NUMBER	FAX NUMBER
Hon. James W. Norman		936-0730
SOAH Docket Clerk		475-4994
TCEQ Docket Clerk		239-3311
Jeff Kirschbaum		239-0606
Blas Coy		239-6377
Kerry Russell		930-7742
Sal Levatino		482-0051

**FROM:** Skip Newsom  
[skipnewsom@fnlawtx.com](mailto:skipnewsom@fnlawtx.com)**DATE:** December 1, 2004**SUBJECT:** *Applications of the Town of Prosper to Amend Sewer CCN No. 20888***CLIENT/MATTER:** Fishtrap Properties **CODE:** 204**Number of pages, including this cover sheet:** 36

IF PROBLEMS ARE ENCOUNTERED IN RECEIVING THIS TRANSMISSION, PLEASE CALL (512) 477-4121 AS SOON AS POSSIBLE.

**Comments/Special Instructions:** See attached correspondence from Skip Newsom, along with Fishtrap Properties, LLP's Objections to Pre-filed Testimony for filing in this matter.**CONFIDENTIALITY NOTICE**

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# FISHER & NEWSOM, P.C.

ATTORNEYS AT LAW

3724 JEFFERSON STREET, SUITE 210  
AUSTIN, TEXAS 78731  
(512) 477-4121  
(512) 477-2860 FAX

Skip Newsom  
Board Certified Administrative Law  
Texas Board of Legal Specialization

December 1, 2004

Via Fax No. 512-936-0730

The Honorable James W. Norman  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West Fifteenth Street, Room 502  
Austin, Texas 78701

Re: Application of the Town of Prosper to Amend Sewer CCN No. 20888  
SOAH Docket No. 582-03-1994; TCEQ Docket No. 2002-1350-UCR

Dear Judge Norman:

Enclosed please find Fishtrap Properties, LLP's Objections to Pre-filed Testimony for filing in this matter.

Sincerely,



Skip Newsom

SN/jam

Enclosures

cc: Service List

CN/20888/CO

**SOAH DOCKET NO. 582-03-1994  
TCEQ DOCKET NO. 2002-1350-UCR**

APPLICATION OF THE TOWN OF	§	BEFORE THE STATE OFFICE
PROSPER TO AMEND SEWER	§	
CERTIFICATE OF CONVENIENCE	§	OF
AND NECESSITY NO. 20888 IN	§	
DENTON COUNTY, APPLICATION	§	ADMINISTRATIVE HEARINGS
NO. 34004-C	§	

**FISHTRAP PROPERTIES, LLP'S  
OBJECTIONS TO PRE-FILED TESTIMONY**

COMES NOW, Fishtrap Properties, LLP ("Fishtrap") and in conjunction with the supplemental direct case testimony filed by the Town of Prosper ("Prosper") and the Executive Director of the Texas Commission on Environmental Quality ("TCEQ") and files these objections and would show the Court as follows:

**I.**

**Admissibility of Pre-filed Testimony: General Principals**

The Texas Rules of Evidence standards of admissibility apply to pre-filed evidence presented in SOAH proceedings in a manner similar to the application of such Rules to summary judgment proceedings which require that the contents of evidence be admissible. Brownlee v. Brownlee, 665 S.W.2d 111, 112 (Tex. 1984). A party cannot advance its burden of proof or persuasion with statements based on rumor, conjecture, or belief; the statements must recite facts based on personal knowledge. Grand Prairie School District v. Vaughan, 729 S.W.2d 944, 945 (Tex. 1990). For this purpose, the testimony must affirmatively demonstrate that the testifying witness possesses knowledge of the facts he or she has asserted therein. KSCS v. Jennings, 750 S.W.2d 760, 761-62, (Tex. 1988) Fair Women, Inc. V. Transland Mgt. Corp., 766 S.W.2d 323 (Tex.App.—Dallas 1992, no writ). Such a requirement ensures that the testimony presented is not conclusory or otherwise imbued with an improper subjective determination of facts. Haynes v. City of Beaumont, 35 S.W.2d 166, 178 (Tex.App.—Texarkana 2000, no writ).

Hearsay is inadmissible as pre-filed evidence. Campbell v. Ft. Worth Bank & Trust, 705 S.W.2d 405, 410 (Tex.App.—Ft. Worth 1986, no writ). So too is testimony about the content of documents, which is barred by the best evidence rule. Cuellar v. City of San Antonio, 821 S.W.2d 250, 256 (Tex.App.—San Antonio, 1991, writ denied).

Because this case involves the legislative functions of the governing body or Town Council of the Town of Prosper, both in terms of actions heretofore taken and actions that will or may be taken in the future, a court may consider only the acts of the governing body as a whole, as distinguished from the statements or representations of individual members or officials as to how or why they may have voted or may vote or act in the future in deciding, for example, whether the municipality will take action to annex property, approve development applications, enter into contracts, undertake capital expenditures, extend facilities or services, establish rates or expend funds to serve areas heretofore not served by the city:

A city council can affect the City's business only as a group. It is a well-settled rule that the governing authorities of cities can express themselves and bind the cities only by acting together in a meeting duly assembled. Stirman v. City of Tyler, 443 S.W.2d 354, 358 (Tex.Civ.App.—Tyler 1969, writ ref'd n.r.e.). A city council can transact a city's business transactions only by resolution or ordinance, by majority rule of the council. Stirman, 443 S.W.2d at 358; First Nat. Bank of Marlin v. Dupuy, 133 S.W.2d 238, 240 (Tex.Civ.App.—Waco 1939, writ dismiss'd, judg. Cor.). A city can act by and through its governing body; statements of individual council members are not binding on the city. Alamo Carriage v. City of San Antonio, 768 S.W.2d 937, 941-42 (Tex.App.—San Antonio 1989, no writ). Similarly, an individual city council member's mental process, subjective knowledge, or motive is irrelevant to a legislative act of the city, such as the passage of an ordinance. See Sosa v. City of Corpus Christi, 739 S.W.2d 397, 405 (Tex.App.—Corpus Christi 1987, no writ).

City of Corpus Christi v. Bayfront Associates Limited, 814 S.W.2d 98 (Tex.App.—Corpus Christi 1991, writ denied). Statements of municipal actions taken or to be taken by municipal officials or even governing body members are incompetent and ineffectual to show the validity, intent,



purpose or basis for municipal actions, the proof of which may only be supplied by the enacted ordinances or resolutions or the authenticated minutes of the meeting at which the action occurred. Canales v. Laughlin, 147 Tex. 169, 214 S.W.2d 451 (1948); City of Bonham v. Southwest Sanitation, Inc., 871 S.W.2d 765, 767 (Tex.App.—Texarkana 1994, writ denied). These principles are consistent with the basic doctrine that subjective knowledge, perspective, motive or mental processes of an individual legislator or administrator are irrelevant because legislative acts express the "collective will" of the legislative body. Town of Sunnyvale v. Mayhew, 905 S.W.2d 234, 250 (Tex.App.—Dallas 1994), reversed and rendered for the Town on other grounds, 964 S.W.2d 922 (Tex.1998), cert denied, 526 U.S. 1144 (1999).

As stated by the Dallas Court of Appeals:

The only way that a political subdivision of the state can act is by and through its governing body. Cook v. City of Addison, 656 S.W.2d 650, 657 (Tex.App.—Dallas 1983, writ ref'd n.r.e.). A city may act only in its official capacity, and statements by individual members of city government are not binding. Cook, 656 S.W.2d at 657. A city's governing body may act only by resolution or ordinance and may not delegate the right to make decisions affecting the transaction of city business. Stirman v. City of Tyler, 443 S.W.2d 354, 358 (Tex.Civ.App.—Tyler 1969, writ ref'd n.r.e.); City of Floydada v. Gilliam, 111 S.W.2d 761, 764 (Tex.Civ.App.—Amarillo 1937, no writ); see City of San Antonio v. Micklejohn, 89 Tex. 79, 81-82, 33 S.W. 735, 736 (1895).

City of Coppell v. General Homes Corporation, 763 S.W.2d 448, 456-57 (Tex.App.—Dallas 1988-no writ).

A witness' qualification to offer expert testimony or opinion evidence is dependent upon the witness' "knowledge, skill, experience, training, or education" that goes to the very matter or "specific issue before the court" on which he or she is to give an opinion. Broders v. Heise, 924 S.W.2d 148 (Tex. 1996). Such expertise must be demonstrated by the offering party. Id. To

make such showing, the connection between the witness' experience and training and the specific issues in the case must be demonstrated. "General experience in a specialized field does not qualify a witness as an expert." Houghton v. Port Terminal Railroad Association, 999 S.W.2d 39 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1999, no writ).

Expert testimony must be both relevant and reliable to be admissible. The Texas Supreme Court follows the federal rule for the admission of scientific or technical expert testimony. In E. I. DuPont de Nemours and Co., Inc. V. Robinson, 923 S.W.2d 549 (Tex. 1995) the Court ruled that the following factors may be considered in determining reliability:

1. the extent to which the theory has been or can be tested;
2. the extent to which the technique relies upon the subjective interpretation of the expert;
3. whether the theory has been subjected to peer review or publication;
4. the technique's potential rate of error;
5. whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
6. the non-judicial uses that have been made of the theory or technique.

Applying these rules, the Texas Supreme Court has upheld the exclusion of expert testimony on the basis that the trial court could have found that the expert testimony was not reliable because (1) it did not exclude other possible causes of the damage in question, (2) the expert's methodology was questionable, (3) the expert's research and opinions were done for the purpose of litigation, and (4) the expert's methodology was not generally accepted in the scientific community.

In establishing such relevance and reliability, the expert must demonstrate how the data and observations relied upon support the expert's conclusions. Waring v. Womack, 945 S.W.2d 889, (Tex.App.—Austin 1997, no writ). Mere recitation of such conclusions is insufficient as

there must be a demonstrable and plausible nexus between the factual basis for the opinion and the conclusion reached.

**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.

(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.

**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.

**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.

**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.

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

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

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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 30TAC §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.

**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.

**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 30TAC §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.

**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.

**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").

**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.

**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.

**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.

**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.



**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.

**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.

**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

**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 cites 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.

**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.

**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 area 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.

CCN/20888/CO

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

**Objection No. 11  
Page 6, line 1 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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.



**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.

**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 NTWMD, it does not necessarily mean such contract is for service in the Proposed Service Area and therefore such testimony is also irrelevant.

**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.

**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.

**Objections to the Supplemental Direct  
Testimony of Tammy Lee Holguin-Benter**

**Objection No. 1  
Page 3, lines 41 and 42**

Fishtrap objects to Ms. Holguin-Benter's testimony that Prosper has "annexed portions of the requested area" because such testimony is hearsay and violates the best evidence rule in that any annexations that have occurred are best proved up by introduction of the Prosper annexation ordinances which will identify exactly what tracts of land, if any, have been annexed by Prosper.

**Objection No. 2  
Page 4, line 45 to line 47**

Fishtrap objects to Ms. Holguin-Benter's testimony that Mr. Douglas Mousel has testified "that Prosper has annexed several properties in the requested area" because such testimony is hearsay and violates the best evidence rule in that any annexations that have occurred are best proved up by introduction of the Prosper annexation ordinances which will identify exactly what tracts of land, if any, have been annexed by Prosper.

**Objection No. 3  
Page 4, line 50 to line 52**

Fishtrap objects to Ms. Holguin-Benter's testimony that "there have been no developments and/or changes that would affect Prosper's financial stability" because such testimony violates the requirements of E.I. du Pont de Nemours v. Robinson, 923 S.W.2d 549 (Tex. 1995) regarding the proper predicate that must be laid before a witness can express her opinion. The witness has provided the court with no testimony regarding her ability to express an opinion on the financial capability of a public agency to provide the utility service at issue here.

**Objection No. 4**  
**Page 4, line 55 to line 58**

Fishtrap objects to Ms. Holguin-Benter's testimony that "there have been no changes and/or developments that would affect Prosper's managerial capability" because such testimony violates the requirements of E.I. du Pont de Nemours v. Robinson, 923 S.W.2d 549 (Tex. 1995) regarding the proper predicate that must be laid before a witness can express her opinion. The witness has provided the court with no testimony regarding her ability to express an opinion on the managerial capability of a public agency to provide the utility service at issue here.

**Objection No. 5**  
**Page 4, line 62 to page 5, line 65**

Fishtrap objects to Ms. Holguin-Benter's testimony that "there have been no changes and/or developments that would affect environmental integrity of the area" being affected by granting the amendment to sewer CCN No. 20888 as requested by Prosper, because such testimony violates the requirements of E.I. du Pont de Nemours v. Robinson, 923 S.W.2d 549 (Tex. 1995) regarding the proper predicate that must be laid before a witness can express her opinion. The witness has provided the court with no testimony regarding her ability to express an opinion regarding whether granting the requested CCN amendment would affect environmental integrity of the proposed service area.

**Objection No. 6**  
**Page 5, line 69 to line 72**

Fishtrap objects to Ms. Holguin-Benter's testimony that "there have been no changes and/or developments that would affect probable improvement in service or lowering of cost to consumers, because such testimony violates the requirements of E.I. du Pont de Nemours v. Robinson, 923 S.W.2d 549 (Tex. 1995) regarding the proper predicate that must be laid before a

witness can express her opinion. The witness has provided the court with no testimony regarding her ability to express an opinion regarding probable improvement in service or lowering of cost to consumers.

**Objections to the November 19, 2004 Supplemental  
Pre-filed Testimony of Brian Dickey**

**Objection No. 1  
Page 4, lines 21 - Page 5, line 4**

(a) Fishtrap objects to the witness' recital of Victoria Harkins' testimony to the extent that same is offered for the proof of the matter asserted for the reason that same is hearsay;

(b) Fishtrap objects to the witness' recital of Randal Dobbs' testimony to the extent that same is offered for the proof of the matter asserted for the reason that same is hearsay;

(c) Fishtrap further objects to the witness' recital of and reference to the NTMWD contracts with Prosper for the transportation and treatment of wastewater for the reason that same is irrelevant and not probative of any issue in dispute. The contracts referenced are for wastewater originating in the Wilson Creek Drainage Basin of the trinity East Fork River Basin whereas the area involved in this dispute lies within the Doe Branch Drainage Basin of the Trinity River's Elm Fork River Basin.

**Objection No. 2  
General Objection as to Lack of Witness Special Knowledge,  
Training and Expertise to Offer Opinion Testimony and Recommendations**

Fishtrap objects to the witness's conclusions and recommendations for the reason that the testimony as a whole fails to reflect the specialized knowledge, training, education, experience or expertise to offer expert testimony on the issues presented to the witness to address in this proceeding.

Respectfully submitted,

**FISHER & NEWSOM, P.C.**  
3724 Jefferson Street, Suite 210  
Austin, Texas 78731  
(512) 477-4121  
(512) 477-2860 (Facsimile)

By:

*Skip Newsom*

Skip Newsom

State Bar No. 14973800

**SAL LEVATINO**

1524 South IH-35, Suite 234

Austin, Texas 78704

(512) 474-4462

(512) 482-0051 (Facsimile)

**ATTORNEYS FOR FISHTRAP  
PROPERTIES, LLP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was delivered via facsimile and/or regular mail on this 1st day of December, 2004 to the following parties of record:

Jeff Kirschbaum  
Texas Commission on Environmental  
Quality  
Environmental Law Division  
MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-0606 Facsimile

Sal Levatino  
Law Office of Sal Levatino  
1524 South IH-35, Suite 234  
Austin, Texas 78704  
(512) 482-0051 Facsimile

Kerry E. Russell and Art Rodriguez  
Russell, Moorman & Rodriguez, L.L.P.  
102 West Morrow, Suite 103  
Georgetown, Texas 78626  
(512) 930-7742 Facsimile

Blas Coy, Attorney  
Office of the Public Interest Counsel  
Texas Commission on  
Environmental Quality  
MC-103, P.O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-6377 Facsimile

Honorable James W. Norman  
Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025  
(512) 475-4994 Facsimile

Holly Wise, SOAH Docket Clerk  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025  
(512) 475-4994 Facsimile

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

  
Skip Newsom



**FISHER & NEWSOM, P.C.**

ATTORNEYS AT LAW

3724 JEFFERSON STREET, SUITE 210  
AUSTIN, TEXAS 78731  
(512) 477-4121  
FAX (512) 477-2860**FACSIMILE TRANSMITTAL**

TO	TELEPHONE NUMBER	FAX NUMBER
TCEQ Docket Clerk		239-3311
Jeff Kirschbaum		239-0606
Blas Coy		239-6377
Kerry Russell		930-7742

FROM: Skip Newsom  
[skipnewsom@fnlawtx.com](mailto:skipnewsom@fnlawtx.com)

DATE: December 9, 2004

SUBJECT: *Applications of the Town of Prosper to Amend Sewer CCN No. 20888*

CLIENT/MATTER: Fishtrap Properties CODE: 204

Number of pages, including this cover sheet: 18

IF PROBLEMS ARE ENCOUNTERED IN RECEIVING THIS TRANSMISSION, PLEASE CALL (512) 477-4121 AS SOON AS POSSIBLE.

Comments/Special Instructions: See attached correspondence from Skip Newsom, along with Fishtrap Properties, LLP's Objections to Prosper's Offer of Deposition Excerpts for filing in this matter.

**CONFIDENTIALITY NOTICE**

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# FISHER & NEWSOM, P.C.

ATTORNEYS AT LAW

3724 JEFFERSON STREET, SUITE 210  
AUSTIN, TEXAS 78731  
(512) 477-4121  
(512) 477-2860 FAX

Skip Newsom  
Board Certified Administrative Law  
Texas Board of Legal Specialization

December 9, 2004

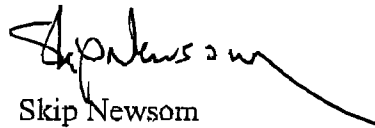
The Honorable James W. Norman  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West Fifteenth Street, Room 502  
Austin, Texas 78701

Re: Application of the Town of Prosper to Amend Sewer CCN No. 20888  
SOAH Docket No. 582-03-1994; TCEQ Docket No. 2002-1350-UCR

Dear Judge Norman:

Enclosed please find Fishtrap Properties, LLP's Objections to Prosper's Offer of Deposition Excerpts for filing in this matter.

Sincerely,



Skip Newsom

SN/jam

Enclosures

cc: Service List