



Control Number: 43781



Item Number: 42

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

# RM&R

RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.  
ATTORNEYS AT LAW

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PUBLIC UTILITY COMMISSION  
FILING CLERK

November 18, 2003

**VIA HAND DELIVERY FACSIMILE**

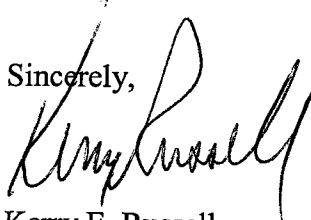
Ms. LaDonna Castañuela  
TCEQ Chief Clerk MC-105  
12015 Park 35 Circle, Bldg. F – 1<sup>st</sup> Floor  
P.O. Box 13087  
Austin, Texas 78767

Re: SOAH Docket No. 582-03-1994, TCEQ Docket No. 2002-1350-UCR,  
*Application of the Town of Prosper to Amend Sewer Certificate of Convenience  
and Necessity No. 20888 in Denton County, Application No. 34004-C*

Dear Ms. Castañuela:

This letter is transmitting a copy of the Town of Prosper's Statement of Position Pursuant to Order No. 18. Please file the following document on behalf of the Town of Prosper in the above-mentioned matter.

Sincerely,



Kerry E. Russell

ADR/fmw  
190/00/ltr 030922  
Enclosures

cc: Service List  
Mayor Charles Niswanger  
Doug Mousel  
John Rapier

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SOAH DOCKET NO. 582-03-1994  
TCEQ DOCKET NO. 2002-1250-UCR

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

**STATEMENT OF POSITION PURSUANT TO ORDER NO. 18**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Town of Prosper ("Prosper" or "Town") and files this Statement of Position in compliance with Order No. 18 in this proceeding. For the reasons stated below, Prosper opposed and continues to oppose Mustang Special Utility District's request that the second jurisdictional hearing in this proceeding be delayed at least one month.

Prosper will be harmed by further delays in this proceeding. Prosper originally sought certification of its requested sewer certificate of convenience and necessity ("CCN") service area in an application filed on April 13, 2000. Due to an administrative error, Prosper was unable to obtain the requested certification. Upon learning of this error, Prosper immediately filed another application to obtain the requested CCN service territory. Said application was filed on July 26, 2002. Prosper published notice of its application on August 29 and September 5, 2002. Mustang Special Utility District, by letter dated September 25, 2002,<sup>1</sup> filed a letter of protest that reads substantially the same, with minor exceptions, as its letter of protest filed on October 31, 2003. However, at the jurisdictional hearing on April 10, 2003, Mustang Special Utility District failed to appear and request party status in this proceeding. To date, it still has not attained party status.

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<sup>1</sup> A copy of Mustang Special Utility District's original letter of protest filed on September 25, 2002, is attached hereto and incorporated herein for all purposes as Exhibit A.

Further, Fishtrap Properties, LLP and Glenbrook Water Supply Corporation (“Protestants”) on July 16, 2003, took the deposition of Prosper’s then Town Administrator, Jennifer Finley. Protestants questioned Ms. Finley regarding Prosper’s notice and used a sample notice from this proceeding as an attachment to her deposition.<sup>2</sup> Protestants, however, waited more than two months to file a Plea to the Jurisdiction with the Administrative Law Judge, just before the hearing on the merits, which further delayed this proceeding at least two months. Now that Mustang Special Utility District has requested a hearing on Prosper’s application which was originally filed sixteen months ago, this proceeding stands to be further delayed.

Prosper simply asks for an amendment to its sewer CCN. Such applications and hearings are not overly complex and do not require extensive discovery. Further, the Administrative Law Judge has only sought a jurisdictional hearing date, not a date for the hearing on the merits. As such, there is no requirement that Mustang Special Utility District or any other potential party review any of the discovery that has thus far been produced. Reviewing discovery has never been a condition precedent to appearing at a jurisdictional hearing. Further, because Mustang Special Utility District has a history of filing a letter of protest and failing to appear to request party status, there is no guarantee that it will appear in this proceeding. Mustang Special Utility District’s request appears to be nothing more than a coordinated effort with Protestants to continue to delay this proceeding.

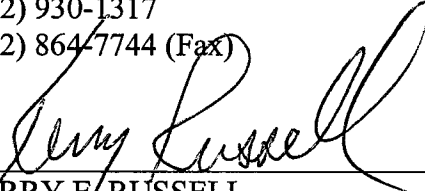
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<sup>2</sup> See Protestants Plea to the Jurisdiction or, in the alternative, Its Plea in Abatement, filed September 18, 2003.

**WHEREFORE PREMISES CONSIDERED**, Prosper respectfully requests that the Administrative Law Judge overrule the motion by a non-party to further delay this proceeding.

Respectfully submitted,

**RUSSELL, MOORMAN & RODRIGUEZ, L.L.P.**  
102 West Morrow, Suite 103  
Georgetown, Texas 78626  
(512) 930-1317  
(512) 864-7744 (Fax)

  
\_\_\_\_\_  
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 18th day of November 2003, 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**

Ms. Lara Nehman, Attorney  
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

**Docket Clerk**

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

**Mustang Special Utility District**

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

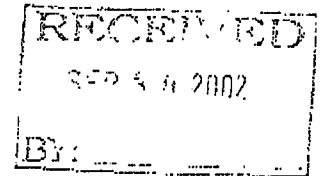
  
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KERRY E. RUSSELL

**RAPIER & WILSON, P.C.**  
*Attorneys at Law*

103 W. McDermott, Allen, Texas 75013-2782

John E. Rapier  
E-mail: rapier@rapierwilson.com

Telephone: 972-727-9904  
800-831-3126  
Facsimile: 972-727-4273



September 25, 2002

Jeffrey A. Saitas, Executive Director  
Texas Commission on Environmental Quality  
Water Permits and Resource Management Division  
Utilities and Districts Section, MC -153  
P.O. BOX 13087  
Austin, TX 78711-3087

Via Fax 1-512-239-6972,  
1-512-239-3311  
and Regular Mail

**Re: Application of the City of Prosper to Amend CCN No 20888 to provide Sewer Utility Service in Denton County.**

Dear Mr. Saitas:

This office represents the Mustang Special Utility District ("Mustang"). Mustang has recently received the attached notice from the City of Prosper ("Prosper") to which Mustang files the following response:

1. Mustang requests a public hearing on Prosper's application.
2. Mustang is the holder of CNN # 11035 for water service and CNN # 20930 for sewer service. Prosper is requesting a CNN for sewer service that is contingent and adjacent to Mustang CNN for water and sewer service in northeast Denton County.
3. Together with the Upper Trinity Regional Water District, the City of Celina and others, Mustang participates in regional water and sewer service for northeast Denton County.
4. The western portion of Prosper's requested sewer CNN naturally drains through Doe Branch. The partners in the Northeast Denton County Sewer Projects are in the process of constructing a regional sewer treatment facility on Doe Branch that will serve the drainage basin of Doe Branch.
5. Mustang has received a request that it provide water and sewer service to a 108 acre tract (the "Tract") from Fishtrap Properties Ltd. The Tract is bound on the west by FM 1385 and on the north by Fishtrap Road. The plat/development plan for the Tract includes 446 water/sewer connections. The Tract is located on the extreme western side of Prosper's requested sewer CCN and the Doe Branch drainage basin.

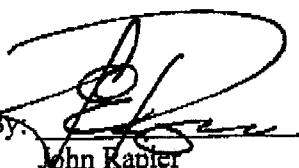
Texas Commission on Environmental Quality  
September 25, 2002  
Page 2

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6. The Tract is located only 75 feet from a major water transmission line being constructed by Mustang, the Upper Trinity and Celina. The Tract is located on 3,000.00 feet of the Doe Branch Regional Water Treatment Facility.
7. It appears that a substantial percentage of Prosper's requested sewer service area is not within the City of Prosper's corporate limits. Prosper is a general law municipality and therefore Prosper has very limited annexation powers.
8. It appears that a substantial percentage of Prosper's requested sewer service area is not within Prosper's CCN for water service.
9. If Prosper's application is granted, then optimal use of the regional facilities will not be achieved causing a negative impact on water and sewer rates, unwarranted negative impact on ground water supplies in the area and a negative impact on Panther Creek.
10. Mustang may withdraw its protest if Prosper will include that part of its proposed sewer and water CCN that is located in the Doe Branch drainage basin in the Northeast Denton County Regional Plan for water and sewer service.

Please add this office to the distribution list for communications. Mustang will work with the Commission, the Applicant and the State Office of Administrative Hearings to resolve the issues relating to Prosper's application.

Very truly yours,  
**Rapier & Wilson, P.C.**

By   
John Rapier  
Attorneys for the  
Mustang Special Utility District

c: City of Prosper  
Mustang Special Utility District  
John Dowdall, DR Capital  
Fishtrap Properties, Ltd.