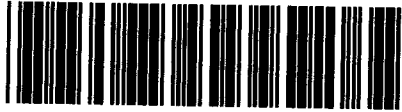


Control Number: 43965



Item Number: 103

Addendum StartPage: 0

43965

RECEIVED

SOAH DOCKET NO. 582-03-2282
TCEQ DOCKET NO. 2003-0033-2001 DEC 17 AM 7:51

APPLICATION OF DENTON COUNTY §
FRESH WATER SUPPLY DISTRICT §
NO. 10 TO AMEND WATER AND §
SEWER CCNS IN DENTON COUNTY §
(APPLICATION NOS. 34068-C/34069-C) §

PUBLIC UTILITY COMMISSION
BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR'S RESPONSE TO DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO. 10'S MOTION TO DISMISS THE REMAINING
INTERVENORS AND MAHARD EGG FARM INC.'S MOTION TO DISMISS THE
DISTRICT'S APPLICATION**

COMES NOW, the Executive Director of the Texas Commission on Environmental Quality (ED), and files its response to Denton County Fresh Water Supply District No. 10's (the District) Motion to Dismiss Mahard Egg Farm, Inc. (Mahard) and Prosper Independent School District (PISD) as well as Mahard Egg Farm, Inc.'s Motion to Dismiss Denton County Fresh Water Supply District No. 10's Application.

1. THE DISTRICT'S MOTION TO DISMISS THE INTERVENORS

Pursuant to the District's Amendment of Certification Application and Motion to Dismiss Intervenor and the District's Reply to Mahard Egg Farm's Motion to Dismiss, the ED agrees with the entirety District's position, including the following major contentious points:

- a. Neither Mahard nor PISD have provided sufficient verification that they own property or have an option to purchase property in the proposed service area. The District filed affidavits which support this claim.
- b. Properties adjacent to the proposed area are not affected by the scope and the content of the CCN application in a manner distinguishable from the general public.
- c. Property/Urban growth is not a factor which the TCEQ may consider in granting a CCN application.
- d. Neither Mahard nor PISD have a personal justiciable interest in the District's CCN.
- e. How the District provides retail public water and sewer utility services to the public for compensation within the proposed service area does not effect either Mahard or PISD.

Therefore, the ED supports a motion to dismiss both Mahard and PISD due to a lack of standing.


2. MAHARD'S MOTION TO DISMISS THE DISTRICT'S APPLICATION

Pursuant to the District's Reply to Mahard's Motion to Dismiss, the ED agrees with the District's position. Although 30 TAC Section 281.23(a) states that a utility must re-notice when an application is amended, it is the policy of the Texas Commission on Environmental Quality to only re-notice when the amendments in the application increase the proposed certificated service area not when the amendment decreases the proposed surface area. The rationale for the interpretation of this rule lies in geometry. When the original CCN was filed in a large area, the people in that particular original area must be noticed of this proposed service. At that time they have an opportunity to enter into this hearing process. If the CCN shrinks in size and does not add any additional area, those people in that smaller proposed service area have already been noticed of the CCN when the first notice was given. Those individuals, if not represented at the original hearing have waived their right to become an affected party. Re-noticing the service area is not necessary; and to do so would cause an injustice to the District. The ED does not support the District's dismissal from this case.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Stephanie Bergeron, Director
Environmental Law Division

By 
Sheridan L. Gilkerson
Staff Attorney
Environmental Law Division
Bar No. 24034458

P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-2223 Telephone
(512) 239-0606 Facsimile

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2003, a true and correct copy of the foregoing document was delivered via facsimile, hand delivery, interagency mail, or by deposit in the U.S. Mail to all persons on the attached mailing list.



Sheridan L. Gilkerson
Staff Attorney
Environmental Law Division

MAILING LIST
APPLICATION OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10
TO AMEND WATER AND SEWER CCNS IN DENTON COUNTY (APPLICATIONS
NOS. 34068-C/34069-C)

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Representing Mahard Egg Farm, Inc.

Drew Watkins
605 East 7th Street
Prosper, Texas 75078
Tel: 972/346-3316 ext. 202
Fax: 972/346-9247

Representing Prosper ISD

MAILING LIST
APPLICATION OF DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10
TO AMEND WATER AND SEWER CCNS IN DENTON COUNTY (APPLICATIONS
NOS. 34068-C/34069-C)
(PAGE 2)

Honorable James W. Norman
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
Tel: 512/475-4993
Fax: 512/475-4994

LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel: 512/239-3300
Fax: 512/239-3311


TCEQ

 Protecting Texas
 by Reducing and
 Preventing Pollution

FAX TRANSMITTAL

 DATE: July 16, 2003

Total Pages (including this cover sheet):

6

TO: Name See Below
 Organization _____
 Telephone Number _____
 FAX Number _____

FROM: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Name Sheridan L. Gilkerson
 Title Attorney
 Telephone Number (512) 239-2223
 FAX Number (512) 239-0626/239-3434

PLEASE CALL AS SOON AS POSSIBLE IF ALL PAGES ARE NOT RECEIVED OR IF THERE ARE ANY OTHER PROBLEMS WITH THE TRANSMITTAL OF THIS FAX.

NOTES:

Re: Application of Denton County Fresh Water Supply District No. 10 to Amend Water and Sewer Certificates of Convenience and Necessity Nos. 13021 and 20923 in Denton County; SOAH Docket No. 582-03-2282; TCEQ Docket No. 2003-0033-UCR

cc: Mark Zeppa, 346-6847
 Kerry E. Russell; 512/864-7744
 John Turney; 476-1513
 Drew Watkins; 972/346-9247
 Honorable James W. Norman; 475-4994
 LaDonna Castanuela, 239-3311

CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGE / ATTORNEY WORK

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Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Kathleen Hartnett White, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 16, 2003

LaDonna Castañuela, Chief Clerk
TCEQ Office of Chief Clerk MC-105
P.O. Box 13087
Austin, TX 78711-3087

Re: Application of Denton County Fresh Water Supply District No. 10 to Amend Water and Sewer Certificates of Convenience and Necessity Nos. 13021 and 20923 in Denton County; SOAH Docket No. 582-03-2282; TCEQ Docket No. 2003-0033-UCR

Dear Ms. Castañuela:

Enclosed please find the Executive Director's Response to Protestants Denton County Fresh Water Supply District No. 10 Motion to Dismiss the Remaining Intervenors and Mahard Egg Farm Inc's Motion to Dismiss the District's Application in the above-referenced matter.

Truly yours,

A handwritten signature in black ink, appearing to read "SG".

Sheridan L. Gilkerson
Staff Attorney
Environmental Law Division

Enclosure

CCN/13081/588 13-00
8/2/03

To...
Cc...

Subject: Docket Change

Case Name: * denton cty

Docket Number: * 582-03-2282

ALJ: * J. norman

Date: * Fri 10/24/2003

Type of Action:

* Hearing Continued to Date to be Determined

Asterisk denotes a required field.

Setting Date and Time

On/To Date and Time: None None

From Date and Time: * Thu 10/30/2003 9:00AM

Duration: * 4 hours

Disposition of Case/File

Date Order Signed: Fri 10/24/2003 8:21 AM

Disposition of case file: * Assign to ALJ

Assigned to ALJ:

Special Instructions:
phc conference 10/28/03 still on

Measures Reporting

Notice of Hearing: None

Hearing on Merits: None

Record Closed: None

PFD/FO/DO Issued: None

Was this an Admin. Penalty Case? [dropdown]

Was a Fine Recommended? [dropdown]

Amount of fine (\$): \$0.00

Amended PFD Issued: None

Remand Dismissed: None

Remand Hearing: None

Remand Record Closed: None

Remand PFD Issued: None

Amended Remand PFD Issued: None

PFD Changed by Referring Agency: None

PFD Overturned/ Remanded by a Court: None

Mediation (MSC) / ADR Information

Date Mediation Requested: None

Date Mediation Granted/Ordered: None

Date Mediation Denied: None

Date Mediation Successful: None

Date Mediation Unsuccessful: None

Date Referred to TCEQ: None

Date For Telephonic Mediation: None

To...

Cc...

Subject: Docket Change

Case Name: * denton cty

Docket Number: * 582-03-2282

ALJ: * j. norman

Date: * Tue 10/21/2003

Type of Action:

* Prehearing Set

Asterisk denotes a required field.

Setting Date and Time

On/To Date and Time: * Tue 10/28/2003 1:30PM

From Date and Time: None None

Duration: * 0 hours

Disposition of Case/File

Date Order Signed: Tue 10/21/2003 2:36 PM

Disposition of case file: * Assign to ALJ

Assigned to ALJ:

Special Instructions:

Measures Reporting

Notice of Hearing: None

Hearing on Merits: None

Record Closed: None

PFD/FO/DO Issued: None

Was this an Admin. Penalty Case?

Was a Fine Recommended?

Amount of fine (\$) : \$0.00

Amended PFD Issued: None

Remand Dismissed: None

Remand Hearing: None

Remand Record Closed: None

Remand PFD Issued: None

Amended Remand PFD Issued: None

PFD Changed by Referring Agency: None

PFD Overturned/ Remanded by a Court: None

Mediation (MSC) / ADR Information

Date Mediation Requested: None

Date Mediation Granted\Ordered: None

Date Mediation Denied: None

Date Mediation Successful: None

Date Mediation Unsuccessful: None

Date Referred to TCEQ: None

Date For Telephonic Mediation: None

To...

Cc...

Subject: Docket Change

Case Name: denton

Docket Number: 582-03-2282

ALJ: j. norman

Date: Mon 10/13/2003

Type of Action:

* Prehearing Continued to Date to be Determined

Asterisk denotes a required field.

Setting Date and Time

On/To Date and Time: None None

From Date and Time: Thu 10/16/2003 9:00AM

Duration: 4 hours

Disposition of Case/File

Date Order Signed: Mon 10/13/2003 8:36 AM

Disposition of case file: Assign to ALJ

Assigned to ALJ:

Special Instructions:

Measures Reporting

Notice of Hearing:	None	Amended PFD Issued:	None
Hearing on Merits:	None	Remand Dismissed:	None
Record Closed:	None	Remand Hearing:	None
PFD/FO/DO Issued:	None	Remand Record Closed:	None
Was this an Admin. Penalty Case?		Remand PFD Issued:	None
Was a Fine Recommended?		Amended Remand PFD Issued:	None
Amount of fine (\$):	\$0.00	PFD Changed by Referring Agency:	None
		PFD Overturned/ Remanded by a Court:	None

Mediation (MSC) / ADR Information

Date Mediation Requested: None

Date Mediation Granted/Ordered: None

Date Mediation Denied: None

Date Mediation Successful: None

Date Mediation Unsuccessful: None

Date Referred to TCEQ: None

Date For Telephonic Mediation: None

Mailing List

**SOAH Docket No. 582-03-2282
TCEQ Docket No.2003-0033-UCR**

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◆Docket Clerk
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Texas Commission on Environmental Quality
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ITEM NO.	DATE FILED OR ISSUED	DOCUMENT FILED/ISSUED	BY WHOM FILED OR ISSUED
51.	10/24/03	ORDER NO. 15 CONTINUING HEARING ON THE MERITS	J. NORMAN
52.	10/29/03	NOTICE OF WITHDRAWAL-MAHARD EGG FARM	J. TURNEY
53.	10/31/03	ORDER NO. 16 DISMISSING MAHARD EGG FARM	J. NORMAN
54.	11/03/03	ORDER CERTIFYING QUESTIONS TO THE COMMISSION	J. NORMAN

ITEM NO.	DATE FILED OR ISSUED	DOCUMENT FILED/ISSUED	BY WHOM FILED OR ISSUED
24.	09/05/03	DENTON COUNTY'S RESPONSE TO ORDER # 7	M. ZEPPA
25.	09/08/03	ORDER NO. 8	J. NORMAN
		PLEADING FILE #2	
26.	09/22/03	ED'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE	L. NEHMAN
27.	09/24/03	DENTON COUNTY'S RESPONSE TO ED'S MOTION TO DISMISS	M. ZEPPA
28.	09/24/03	DENTON COUNTY'S MOTION TO SUBMIT CERTIFIED QUESTION AND ABATE HEARING SCHEDULE	M. ZEPPA
29./	09/24/03	ORDER NO. 9 CONCERNING ED'S MOTION TO DISMISS	J. NORMAN
30.	09/25/03	ED'S RESPONSE OF TOWN OF PROSPER'S MOTION TO SEVER	L. NEHMAN
31.	09/25/03	ED'S RESPONSE TO FISHTRAP AND GLENBROOK'S PLEA TO JURISDICTION	L. NEHMAN
32.	09/25/03	ED'S RESPONSE TO DENTON CTY'S RESPONSE TO ED'S MOTION TO DISMISS AND ED'S MOTION FOR CONTINUANCE	L. NEHMAN
33.	09/26/03	ORDER NO. 10 CONCERNING ED'S MOTION TO CONTINUE FILING DEADLINE	J. NORMAN
34.	09/29/03	DENTON CTY'S RESPONSE TO ED'S MOTION TO DISMISS	M. ZEPPA
35.	09/29/03	ORDER NO. 11 CONCERNING ORDER NO. 9 /MOTIONS TO ABATE AND MOTION TO SUBMIT CERTIFIED QUESTIONS	J. NORMAN
36.	09/29/03	PROSPER'S RESPONSE TO ORDER NO. 11	M. SANCHEZ
37.	09/30/03	DENTON COUNTY MOTION TO SUBMIT CERTIFIED QUESTIONS AND MOTION TO ABATE	M. ZEPPA
38.	10/01/03	PROSPER ISD RESPONSE TO ORDER NO. 11	M. SANCHEZ
39.	10/01/03	DENTON COUNTY RESPONSE TO ORDER NO. 9 AND 11	M. ZEPPA
40.	10/06/03	ORDER NO. 12 CONCERNING MOTION FOR CERTIFIED QUESTIONS AND ABATEMENT	J.. NORMAN
41.	10/07/03	DENTON COUNTY'S RESPONSE TO ORDERS 9 AND 11	M. ZEPPA
42.	10/07/03	DENTON COUNTY'S RESPONSE TO ORDER 12	M. ZEPPA
43.	10/10/03	PROSPER'S RESPONSE TO ORDER NO. 12	M. SANCHEZ
44.	10/10/03	ED'S RESPONSE TO ORDER NO. 12	L. NEHMAN
45.	10/10/03	MAHARD EGG FARM RESPONSE TO ORDER NO. 12	J. TURNEY
46.	10/13/03	CONCERNING RESPONSES TO ORDER 12 AND 6	J, NORMAN
47.	10/20/03	LTR FROM PROSPER ISD RE: REJECTION OF OFFER	M. SANCHEZ
50.	10/21/03	ORDER NO.14 CONCERNING REQUEST TO SUBMIT CERTIFIED QUESTIONS	J. NORMAN

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582-03-2282

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1.	02/27/03	REQUEST FOR HEARING	M. MOHAIR
2.	03/03/03	NOTICE OF HEARING	L. CASTANEA
3.	05/15/03	ORDER NO.1 SETTING OUT SCHEDULE	J. NORMAN
4.	06/03/03	DENTON COUNTY'S MOTION TO DISMISS AS INTERVENERS	M. ZEPPA
5.	06/10/03	TOWN OF PROSPER'S NOTICE OF WITHDRAWAL OF PROTEST AND STATEMENT OF SUPPORT	K. RUSSELL
6.	06/13/03	ORDER NO. 2 CONCERNING MOTION TO DISMISS INTERVENERS	J. NORMAN
7.	06/23/03	ORDER NO. 3 CONCERNING MOTION TO DISMISS INTERVENERS	J. NORMAN
8.	06/23/03	ED'S REQUEST FOR DISCLOSURE, INTERROGATORIES, REQUESTS FOR PRODUCTION	S. GILKERSON
9.	06/27/03	PROSPER ISD-RESPONSE TO MOTION TO DISMISS	D. WATKINS
10.	06/27/03	MAHARD EGG FARM-RESPONSE TO MOTION TO DISMISS AND REQUEST FOR EXTENSION OF TIME	J. TURNEY
11.	06/27/03	WITHDRAWAL OF PROTEST-TOWN OF PROSPER	K. RUSSELL
12.	06/30/03	ORDER NO. 4 CONCERNING EXTENSION OF TIME AND DISMISSAL OF TOWN OF PROSPER	J. NORMAN
13.	06/30/03	DENTON CITY REPLY TO PROSPER TO MOTION TO DISMISS INTERVENERS	M. ZEPPA
14.	07/03/03	MAHARD EGG FARM MOTION TO DISMISS AND RESPONSE TO DISMISS INTERVENERS	J. TURNEY
15.	07/03/03	DENTON CITY'S REPLY TO MAHARD'S MOTION TO DISMISS	M. ZEPPA
16.	07/07/03	DENTON CITY RULE 11 AGREEMENT ON DISCOVERY ANSWERS WITH ED	M. ZEPPA
17.	07/07/03	ORDER NO. 5 CONCERNING MOTIONS TO DISMISS BY DENTON CITY AND MAHARD	J. NORMAN
18.	08/01/03	ORDER NO. 6 DENYING MOTIONS TO DISMISS BY DENTON COUNTY AND MEHARD EGG FARM	J. NORMAN
19.	09/03/03	ORDER NO. 7 CONCERNING PREFILED TESTIMONY	J. NORMAN
20.	*06/03/03	PROSPER'S REQUEST FOR DISMISSAL	K. RUSSELL
21.	*07/02/03	REQUEST FOR SUBPOENA	K. RUSSELL
22.	*07/28/03	ED'S BRIEF RE: DENTON COUNTY/MAHARD EGG FRAM	L. NEHMAN
23.	*08/08/03	LTR RE: DISCOVERY DEADLINE	J. TURNEY