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SOAH Docket No. 582-03-1994
TCEQ Docket No. 2002-1250-UCR

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

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S RESPONSE TO FISHTRAP PROPERTIES, LLP'S AND
GLENBROOK WATER SUPPLY CORPORATION'S PLEA TO THE JURISDICTION
OR, IN THE ALTERNATIVE, ITS PLEA IN ABATEMENT**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the Executive Director of the Texas Commission on Environmental Quality and files her response to Fishtrap Properties, LLP's and Glenbrook Water Supply Corporation's (Movants') Plea to the Jurisdiction or, in the Alternative, its Plea in Abatement.

The notice of application that the Town of Prosper ("Prosper") sent to neighboring utilities contained correct information regarding the location of the requested service area that should have put neighboring utilities on notice as to where Prosper intended to provide service. The correct information includes a general description of the northern, southern, eastern and western boundaries. Also, the language regarding the service area being located approximately two miles west of Prosper is a correct approximation. Typically, the boundary of a proposed new or amended Certificate of Convenience and Necessity ("CCN") is described in the notice as an approximation and in a way that should be familiar to the intended audience. Prosper's notice of its application also contained an attached map with the correct proposed service area indicated.

The Executive Director agrees, however, with Movants' assertion that some of the language of the notice may have been misleading and caused confusion to neighboring utilities who received it. Specifically, the language stating that the proposed service area is totally within the city limits of Prosper is misleading. The Executive Director, when reviewing a city's proposed notice, has no independent way of verifying a city's assertion that an area is within its

city limits or not. These boundaries often change due to annexation. Since this issue was brought to light, the Executive Director has learned that the proposed service area is bounded by Prosper's city limits, but is mostly not located inside the city limits. If a neighboring utility glanced only at that language which was in all caps, bolded, and underlined, the utility may have been misled. Movants' mistated the law, however, regarding a city's requirement to obtain a CCN. A city is not required to obtain a CCN to provide water and sewer service to areas inside or outside their corporate boundaries, but as in this case, they may choose to do so. See Texas Water Code §13.242, regarding entities required to obtain a CCN.

The Executive Director is disappointed that Movants' are only now raising this issue on the eve of the evidentiary hearing when apparently, they have known about it for some. Counsel for Movants raised this issue during the deposition of Jennifer D. Finley which took place on July 16, 2003. That being said, the Executive Director is not aware of a time restriction for raising the jurisdictional issue, but questions the motives of the Movants raising it at this time.

The Executive Director asserts that appropriate relief is for new notice to be sent to neighboring utilities, not for the matter to be dismissed. Dismissing the matter for lack of jurisdiction is an extreme measure that would not honor the time, money, and effort that the parties have invested in this proceeding. If the matter is dismissed from SOAH, Prosper would still be able to reissue notice, but the proceeding would start over from the beginning. The Executive Director asserts that sending a second notice to neighboring utilities, although also disruptive to the process, would ensure that neighboring utilities are not misled by the notice of the application, but will allow the parties to proceed with this matter without undue delay.

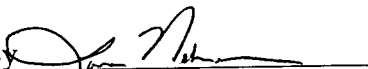
Therefore, the Executive Director respectfully recommends that Prosper be required to send new notice to neighboring utilities, that neighboring utilities be given 30 days to respond, and thereafter, that this case go forward either with the evidentiary hearing as originally planned or if a neighboring utility chooses to participate, that the schedule be reevaluated at that time.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Margaret Hoffman
Executive Director

Stephanie Bergeron, Director
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By 

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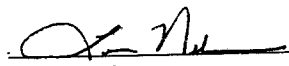
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ENVIRONMENTAL QUALITY

Mailing List
The Town of Prosper
SOAH Docket No. 582-03-1994
TCEQ Docket No. 2002-1250-UCR

Certificate of Service

I hereby certify that on this 23rd day of September, 2003, a copy of the attached document was sent by facsimile, First Class Mail, and or intra-agency/inter-agency mail to the persons on this mailing list.



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TOWN OF PROSPER
SOAH DOCKET NUMBER: 582-03-1994
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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

September 23, 2003

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

RE: Application of Town of Prosper to Purchase Facilities and Transfer Water Certificate of Convenience and Necessity No. 11863 and to Obtain a Sewer Certificate of Convenience and Necessity (CCN) in Harris County; SOAH Docket No. 582-03-1994; TCEQ Docket No. 2002-1250-UCR

Dear Judge Norman:

Enclosed is the Executive Director's Response to Fishtrap Properties, LLP's and Glenbrook Water Supply Corporation's Plea to the Jurisdiction or, in the Alternative, its Plea in Abatement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lara Nehman".

Lara Nehman
Staff Attorney
Environmental Law Division

cc: Mailing List