



Control Number: 43965



Item Number: 113

Addendum StartPage: 0

43965

SOAH DOCKET NO. 582-03-2282  
TCEQ DOCKET NOS. 2003-0033-UCR

RECEIVED

2014 DEC 17 AM 7:52

BEFORE THE STATE OFFICE  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF

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, TEXAS §

ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") respectfully files this Motion to Dismiss for Failure to Prosecute the Application by Denton County Fresh Water Supply District No. 10's (the "District's") to Amend its Water and Sewer Certificates of Convenience and Necessity Nos. 13021 and 20923 (the "Application"). In support of this Motion, the Executive Director asserts the following:

1. A contested case may be dismissed for want of prosecution for the party's failure to prosecute the case in accordance with the requirement of statute, rule, or order of the judge. SOAH Procedural Rule §155.57(b).
2. Order No. 1 issued on May 15, 2003, ordered that all parties pre-file their direct case evidence in writing. This order required the District to file its direct case on August 15, 2003, the other parties to file their direct cases on September 5, 2003, and the Executive Director to file her direct case on September 26, 2003.
3. As of September 19, 2003, the District has not filed its direct case and has not requested an extension to do so. The parties whose direct testimony was due on September 5, 2003, have also not filed their direct cases nor have they requested an extension to do so.

4. The Executive Director served discovery requests upon all parties. Only Mahard Egg Farms filed a response. The District's response was due on July 14, 2003.

5. On September 8, 2003, the Administrative Law Judge issued Order No. 8 which stated that it was the Administrative Law Judge's belief that it is inappropriate for parties to suspend a hearing schedule presumably on their own volition. The Judge ruled that the hearing schedule remained in effect. Despite this ruling, the District has not filed any request to amend its deadlines or indicated an intent to prosecute its case.

Based upon the foregoing, the Executive Director respectfully requests that the Application be dismissed for failure of the District to prosecute its case in accordance with the Administrative Law Judge's orders.

If this Motion is denied, the Executive Director will request that the other parties be ordered to file their direct cases by a given date and that the Executive Director's deadline for filing her direct case, which is currently September 26, 2003, be continued to allow for the same amount of time after the filing of the other parties' direct cases as was provided in the Administrative Law Judge's Order No. 1. If the Executive Director is required to meet the current deadline, she will be prejudiced by the failure of the other parties to first file their direct cases and will not have the necessary information to do so.

Finally, if the Administrative Law Judge grants this Motion, the Executive Director respectfully requests that the matter of the dismissal be set for consideration by the Commission. If the matter is merely dismissed from SOAH's docket and remanded to the Executive Director, the

Executive Director will not have the authority to dismiss the matter. Only the Commission has the authority to dismiss an application<sup>1</sup>.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Margaret Hoffman  
Executive Director

Stephanie Bergeron, Director  
Environmental Law Division

By: *Sheridan R. Gilkerson for:*  
Lara Nehman  
Staff Attorney  
Environmental Law Division  
State Bar of Texas No. 00794358  
MC-173, P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-1121  
Fax: (512) 239-0606


---

<sup>1</sup> The undersigned attorney is unable to find any authority by which the Executive Director may dismiss an application. 30 TAC §80.25 (e) pertains to dismissal when an application is withdrawn, but does not address dismissal for other causes. In past cases, matters dismissed from SOAH's docket had to be brought before the Commission for dismissal.

**Mailing List**  
**Denton County Fresh Water Supply District No. 10**  
**to Amend Water and Sewer CCNs in Denton County**  
**Applications Nos. 34068-C/34069-C**

Certificate of Service

I hereby certify that on this 19<sup>th</sup> 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.

  
for. \_\_\_\_\_  
Lara Nehman  
Staff Attorney  
Environmental Law Division  
Texas Commission on Environmental Quality

Mark Zeppa  
4833 Spicewood Springs Rd, #202  
Austin, Texas 78759-8436  
Tel: 512/346-4011  
Fax: 512/346-6847

Representing Denton County Water Supply

Lara Nehman, Sheridan Gilkerson  
Staff Attorneys  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-175  
Austin, Texas 78711-3087  
Tel: 512/239-0600  
Fax: 512/239-0606

Representing the Executive Director of the  
Texas Commission on Environmental  
Quality

Blas Coy  
Office of the Public Interest Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-103  
Austin, Texas 78711-3087  
Tel: 512/239-6363  
Fax: 512/239-6377

Representing the Office of Public Interest  
of the Texas Commission on  
Environmental Quality

**Mailing List**

**Denton County Fresh Water Supply District No. 10  
to Amend Water and Sewer CCNs in Denton County  
Applications Nos. 34068-C/34069-C**

John Turney  
823 Congress Ave., Suite 706  
Austin, Texas 78701  
Tel: 512/476-0005  
Fax: 512/476-1513

Representing Mahard Egg Farm, Inc.

Maria Sanchez  
Davidson & Troilo  
919 Congress, Suite 810  
Austin, Texas 78701  
Tel: 512/469-6006  
Fax: 512-473-2159

Representing Prosper ISD

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

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



Handwritten initials "JH" and the number "26" in the top right corner.

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
*Protecting Texas by Reducing and Preventing Pollution*

September 19, 2003

Honorable James W. Norman  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

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 Judge Norman:

Enclosed please find the Executive Director's Motion to Dismiss for Failure to Prosecute for the above referenced matter. All parties have been copied.

Sincerely,

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

Lara Nehman  
Staff Attorney  
Environmental Law Division

cc: Mailing List

Enclosure

To: [Redacted]  
Cc: [Redacted]

Subject: Docket Change

Case Name: denton cty  
Type of Action: (Select one) Prehearing/Preliminary

Docket Number: 582-03-2282

ALJ: j. norman

Date: 05/15/2003

On/To Date: 10/16/03 On/To Time: 9:00AM Duration: [Redacted]

From Date: None From Time: None Duration: [Redacted]

Disposition of Case: [Redacted] Canceled Hearing Date: None

Written Order: Yes Canceled Hearing Time: None

Disposition of case file: [Redacted] Date Order Signed: 05/15/2003

Special Instructions: [Redacted] ALJ Name or 3 Initials: jwn

[Redacted]

**Case Information:**

Hearing City Change: [Redacted]  
Referring Agency/ Order of Remand Received: None  
Court Order of Remand Received: None

**Measures Reporting for**

Notice of Hearing: None  
Hearing on Merits: None  
Record Closed: None  
PPD/ED Issued: None

**ADR/Mediation Information:**

Date Mediation Requested: None  
Date Mediation Granted/Ordered: None  
Date Mediation Denied: None  
Date Mediation Successful: None  
Date Mediation Unsuccessful: None  
MSC Set: None

Was this an Admin. Penalty Case? [Redacted]  
If yes, was a Fine Recommended? [Redacted]  
(If yes, amount of fine?) \$0.00

Major Hearing: [Redacted]  
Amended PPD Issued: None  
Remand Notice of Hearing: None  
Remand Hearing: None  
Remand Record Close: None  
Remand PPD Issued: None  
Amended Remand Date: None  
PPD Changed by Referring Agency: [Redacted]  
PPD Changed by Court: [Redacted]



To...  
Cc...

Subject: Docket Change

Case Name:	denton cty	Type of Action: (Select one)	Hearing on Merits		
Docket Number:	582-03-2282				
ALJ:	j. norman				
Date:	05/15/2003				
On/To Date:	10-30-03	Off/To Time:	9:00AM	Duration:	2 days
From Date:	None	From Time:	None	Duration:	
Disposition of Case:		Cancelled Hearing Date:	None		
Written Order:	Yes	Cancelled Hearing Time:	None		
Disposition of case file:		Date Order Signed:	05/15/2003		
Special Instructions:		ALJ Name or 3 Initials:	jwn		

hom 10-30/31, 2003

Case Information	Measures Reporting for
Hearing City Change	Notice of Hearing
Referring Agency Order of Remand Received	Hearing on Merits
Court Order of Remand Received	Record Closed
	PFD/EO Issued

**ADR/Mediation Information:**

Date Mediation Requested	None
Date Mediation Granted (Orders)	None
Date Mediation Denied	None
Date Mediation Successful	None
Date Mediation Unsuccessful	None
MSC Set	None

Was this an Admin. Penalty Case:	
If yes, was a Fine Recommended:	
(If yes, amount of fine \$)	\$0.00
Major Hearing	
Amended PFD Issued	None
Remand Notice of Hearing	None
Remand Hearing	None
Remand Record Close	None
Remand PFD Issued	None
Amended Remand Date	None
PFD Changed by Referring Agency	
PFD Changed by Court	

SOAH DOCKET NO. 582-03-2282  
TCEQ DOCKET NO. 2003-0033-UCR

APPLICATION OF DENTON COUNTY § BEFORE THE STATE OFFICE  
FRESH WATER SUPPLY DISTRICT NO. §  
10 TO AMEND WATER AND SEWER §  
CERTIFICATES OF CONVENIENCE § OF  
AND NECESSITY NOS. 13021 AND 20923 §  
IN DENTON COUNTY, APPLICATION §  
NOS. 34068-C AND 34069-C ADMINISTRATIVE HEARINGS

ORDER NO. 7

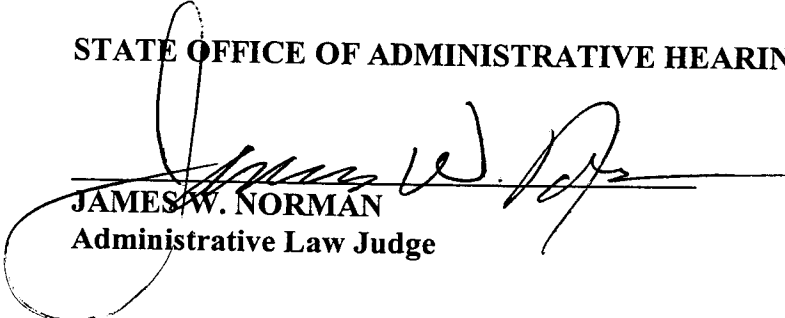
CONCERNING PRE-FILED TESTIMONY AND EXHIBITS

According to the schedule issued on May 15, 2003, Denton County Fresh Water Supply District No. 10 (Applicant) was ordered to file its direct case in writing, including testimony and all exhibits by August 15, 2003. According to the Administrative Law Judge's records, that filing has not been made.

As soon as possible, but no later than September 8, 2003, Applicant shall submit a filing explaining this situation.

Issued this 3<sup>rd</sup> day of September, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
JAMES W. NORMAN  
Administrative Law Judge

corrected  
6/23/02

Mailing List

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

Mark Zeppa  
4833 Spicewood Springs Rd, #202  
Austin, Texas 78759-8436  
Tel. 512/346-4011  
Fax: 512/346-6847

Representing Denton County Water Supply

Lara K.Nehman, Sheridan Gilkerson, Staff Attorneys  
Texas Commission on Environmental Quality  
Commission - MC 175  
PO Box 13087  
Austin, Texas 78711-3087  
Tel. (512) 239-2223  
Fax (512) 239-0606

Representing the Executive Director of the  
Texas Commission on Environmental  
Quality

Blas Coy  
Office of the Public Interest Counsel  
Texas Commission on Environmental Quality - MC 103  
PO Box 13087  
Austin, Texas 78711-3087  
Tel. (512) 239-6363  
Fax (512) 239-6377

Kerry E. Russell  
102 West Morrow, Suite 103  
Georgetown, Texas 78628  
Tel. 512/930-1317  
Fax. 512/864-7744

Representing the City of Prosper

John Turney  
823 Congress Ave, Suite 706  
Austin, Texas 78757  
Tel. 512/476-0005  
Fax. 512/476-1513

Representing Mahard Egg Farm, Inc.

Drew Watkins  
605 East 7<sup>th</sup> Street/P.O. Box 100  
Prosper, Texas 75078  
Tel. 972/346-3316  
Fax: 972-346-9247

Representing Prosper ISD

James W. Norman , Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025  
Tel. (512) 475-4993  
Fax (512) 475-4994

◆Docket Clerk  
Office of the Chief Clerk - MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel. (512) 239-3300