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**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. 8

CONCERNING CERTIFIED QUESTIONS

On September 3, 2003, Denton County Fresh Water District No. 10 (District) responded to Order No. 7 stating that it intended to submit to the Texas Commission on Environmental Quality (Commission) Commissioners the issue of whether Mahard Egg Farm (Mahard) and Prosper Independent School District (PISD) have standing as parties in this case. Among other matters, the District said that State Office of Administrative Hearings (SOAH) Rule 155.35 permits certified questions to be presented on the motion of a party at any time during a proceeding. The District said the granting of a certified question request and submitting the question to the Commissioners abates a hearing schedule. The District said it has executed Rule 11 agreements with PISD and Mahard agreeing they will not be required to file testimony until the certified questions are resolved.

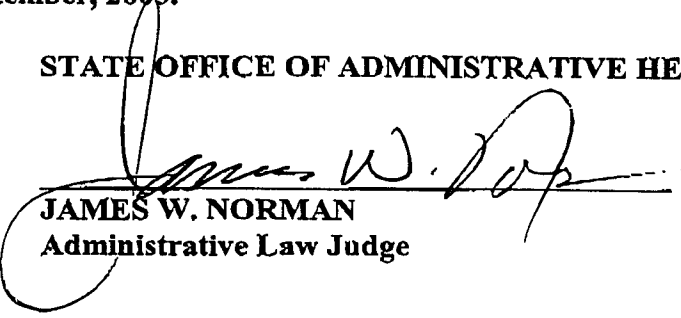
The Administrative Law Judge has reviewed SOAH Rule 155.35 cited by the District and Commission Rule 80.131. He disagrees with the District's (and presumably the other parties') interpretation of those rules. The Administrative Law Judge believes those rules require an Administrative Law Judge to certify questions to the Commission rather than the parties. It appears that an interlocutory appeal to the Commission is not permissible except in certain circumstances in an enforcement action. The Administrative Law Judge must abate any proceedings in a case

rather than an automatic abatement. The Administrative Law Judge believes it is inappropriate for parties to simply decide suspend a hearing schedule (presumably on their own volition).

Based on the above-stated interpretations, the hearing schedule remains in effect.

Issued this 8th day of September, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



JAMES W. NORMAN
Administrative Law Judge

FAX TRANSMITTAL

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