

Control Number: 43965



Item Number: 47

Addendum StartPage: 0

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

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PUBLIC UTILITY COMMISSION  
FILING CLERK

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

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

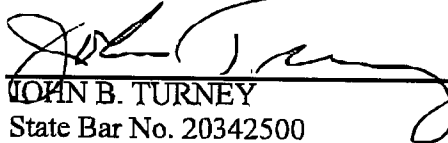
NOTICE OF WRITTEN DISCOVERY

COMES NOW, Mahard Egg Farm, Inc., Intervenor in the above-styled and numbered matter, and states that the following documents have been served on all parties:

1. Response to Applicant's Request for Disclosure;
2. Objections and Responses to Applicant's Request for Production;
3. Objections and Responses to Applicant's Requests for Admissions;
4. Objections and Responses to Applicant's Interrogatories.

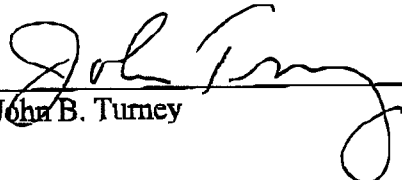
Respectfully submitted,

BELL, TURNEY, COOGAN & RICHARDS, L.L.P.  
823 Congress Avenue, Suite 706  
Austin, Texas 78701  
(512) 476-0005 telephone  
(512) 476-1513 telecopier

  
JOHN B. TURNEY  
State Bar No. 20342500

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded on this the 8<sup>th</sup> day of August, 2003, to all counsel of record by fax or first class mail.

  
\_\_\_\_\_  
John B. Turney

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

CLERK'S OFFICE  
TCEQ  
2003-0033-UCR

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  
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BEFORE THE STATE OFFICE  
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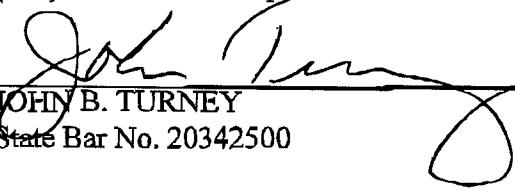
MAHARD EGG FARM'S ANSWERS TO DENTON COUNTY FRESH WATER SUPPLY  
DISTRICT NO. 10'S FIRST REQUESTS FOR DISCLOSURE, INTERROGATORIES,  
PRODUCTION & ADMISSIONS TO MAHARD EGG FARM, INC.

TO: Denton County Fresh Water Supply District No. 10, by and through its Attorney,  
Mark Zeppa, 4833 Spicewood Springs Road, Suite 202, Austin, Texas 78759-8436.

COMES NOW, MAHARD EGG FARM, INC., Intervenor in the above-styled and  
numbered cause of action, and files this its Responses to Denton County Fresh Water Supply  
District No. 10's Request for Disclosure, Interrogatories, Requests for Production and Requests for  
Admission pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

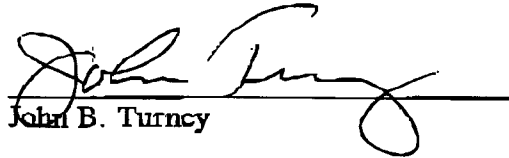
Respectfully submitted,

BELL, TURNEY, COOGAN & RICHARDS, L.L.P.  
823 Congress Avenue, Suite 706  
Austin, Texas 78701  
(512) 476-0005 telephone  
(512) 476-1513 telecopier

  
JOHN B. TURNEY  
State Bar No. 20342500

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of August, 2003, a true and correct copy of the foregoing document in SOAH Docket No. 582-03-2282 was delivered by mail, hand delivered, or faxed to all parties.

  
John B. Turney

### GENERAL OBJECTIONS

Mahard objects to these requests for disclosure, production and admissions, and to these interrogatories, to the extent they seek discovery of information that is protected by the attorney client, party communication or attorney work product privileges. Any documents or information protected by such privileges have been withheld. Subject to these General Objections, and to specific objections set forth in individual responses below, answers and documents will be produced herewith or through supplementation.

#### REQUEST FOR DISCLOSURE

Pursuant to Texas Rule of Civil Procedure 194, you are requested to disclose the information or material described in Rule 194.2 (c), (e), (f), (h) and (i).

- c. The legal theories and, in general, the factual bases of the Responding Party's claims or defenses.

#### RESPONSE:

The application is deficient and incomplete. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Further, the application fails to demonstrate that the requested authorization serves the public interest pursuant to Section 13.246 of the Water Code for reasons including, but not limited to, the need for the requested service by the applicant, the effect of granting the certificate on the District and on the City of Prosper, the ability of the District to provide adequate service to the proposed service area, the need or benefit of excluding the proposed service area from that of the City of Prosper which surrounds it, the infeasibility or unreasonableness of having service provided by the City of Prosper, and the failure to provide for the needs of the Prosper Independent School District. Mahard reserves the right to supplement this response as appropriate.

- e. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

#### RESPONSE:

Mr. Dan Tolleson, Jr.  
MAHARD EGG FARM, INC.  
P. O. Box 248  
Prosper, Texas 75078-0248  
(972) 347-2421

Mr. Tolleson has been employed by Mahard at Prosper for six years, has served on the Prosper ISD school board and the Economic Development Commission, and is familiar with the property within and around the proposed service area

Mr. Drew Watkins  
Prosper Independent School District  
605 E. 7<sup>th</sup> Street  
Prosper, Texas 75078  
(972) 346-3316

Mr. Watkins serves as Superintendent of the Prosper Independent School District, and is familiar with the needs of the District for utility service in the proposed service area, and with the area surrounding the proposed service area.

Hon. Charles Nicewinger  
City of Prosper  
P.O. Box 307  
Prosper, Texas 75078  
(972) 347-2304

Mr. Nicewinger is Mayor of the City of Prosper and is familiar with the proposed service area and surrounding property, the agreement between the Applicant and the City, and with the City's ability to provide service in the general area.

Mr. Robert D. Pettitt, P.E.  
Pettitt & Associates  
10720 Miller Road, Suite 218  
Dallas, Texas 75238  
(214) 221 9955

Mr. Pettitt prepared the preliminary engineering report for the application.

Mr. Phillip W. Huffines  
Huffines & Partners, Inc.  
8222 Douglas Avenue, Suite 660  
Dallas, Texas 75225  
(214)

Mr. Huffines is the developer that has requested service in the proposed service area.

Mr. Tom Taylor, Executive Director  
Upper Trinity Regional Water District

P.O. Drawer 305  
Lewisville, Texas 75067  
(972) 219-1228

The Upper Trinity Regional Water District would, under the application as proposed, provide wholesale water and wastewater service to the Applicant.

Any and all persons listed by any other party. Mahard will supplement as required.

f. For any testifying expert:

1. The expert's name, address, and telephone;
2. The subject matter on which the expert will testify;
3. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to control of the Responding Party, documents reflecting such information;
4. If the expert is retained by, employed by, or otherwise subject to the control of the Responding Party:
  - a. All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
  - b. The expert's current resume and bibliography.

**RESPONSE:** Mahard is currently seeking an expert and will supplement as required. Mahard retains the right to name additional experts and call as an expert witness any and all of the persons identified by any other party to this litigation as an expert witness although Mahard may or may not agree with the opinions and/or qualifications of such expert witness.

h. Any settlement agreements described in Rule 192.3 (g)

**RESPONSE:** None at this time. Mahard will supplement as required.

i. Any discoverable witness statements.

**RESPONSE:** None at this time. Mahard will supplement as required.



## INTERROGATORIES

**INTERROGATORY NO. 1:**

For each person the party to whom these discovery requests are propounded expects to call as a fact witness at the evidentiary hearing in this matter, please provide: (a) the person's name and business address and telephone number; (b) a brief description of the testimony the party to whom these discovery requests are propounded expects that person to provide.

**ANSWER:**

Mahard's trial witnesses may include those persons disclosed by any party in accordance with Requests for Disclosure, as well as any additional witnesses identified through the discovery process. Mahard will supplement such list as required. The list may include any fact or expert witness disclosed by any party, and such disclosures are incorporated fully herein by reference.

**INTERROGATORY NO. 2:**

For each expert not listed in the response to the Request for Disclosure whom the party to whom these discovery requests are propounded has consulted and whose mental impressions and opinions have been reviewed by an expert party to whom these discovery requests are propounded expects to testify to this matter, please provide: (a) the consulting expert's name and business address and telephone number; (b) the facts known by the expert that relate to or form the basis of the expert's mental impression and opinions formed or made in connection with this matter, regardless of when and how the factual information was acquired; (c) the expert's mental impressions and opinions formed or made in connection with this matter and any methods used to derive them; and (d) a curriculum vitae or other detailed description of the expert's qualifications.

**ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Interrogatory in that such information is discoverable only through a Request for Disclosure. Subject to the foregoing objection, there are no such persons at this time; if necessary, Mahard will supplement as required.

**INTERROGATORY NO. 3:**

If the party to whom these discovery requests are propounded proposes to provide water service only in any of the proposed area, please describe how sewer service will be provided in that area.

**ANSWER:**

Not Applicable.

**INTERROGATORY NO. 4:**

If the party to whom these discovery requests are propounded proposes to provide sewer service only in any of the proposed area, please describe how water service will be provided in that area.

**ANSWER:**

Not Applicable.

**INTERROGATORY NO. 5:**

Describe in detail how each of the Texas Water Code §13.246(c) certification criteria is factually impacted by the granting of the District's water CCN application.

**ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Interrogatory as vague, overly broad confusing and unreasonably burdensome. Subject to the foregoing objection, *see* Mahard's answers to Applicant's Requests for Admissions, Requests for Disclosure and Requests for Production.

**INTERROGATORY NO. 6:**

Indicate which of these impacts described in your answer to Interrogatory No. 5 negatively impact the party to whom these discovery requests are propounded.

**ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this interrogatory as not relevant to the present proceeding and not calculated to lead to the discovery of admissible evidence. Mahard further objects to this Interrogatory as vague, overly broad confusing and unreasonably burdensome. Subject to the foregoing objections, the failure of the applicant to meet statutory and regulatory requirements negatively impacts Mahard, and see Mahard's answers to Applicant's Requests for Admissions, Requests for Disclosure and Requests for Production.

**INTERROGATORY NO. 7:**

Describe in detail how each of the Texas Water Code §13.246(c) certification criteria is factually impacted by the granting of the District's sewer CCN application.

**ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Interrogatory as vague, overly broad confusing and unreasonably burdensome. Subject to the foregoing objection, see Mahard's answers to Applicant's Requests for Admissions, Requests for Disclosure and Requests for Production.

**INTERROGATORY NO. 8:**

Indicate which of these impacts described in your answer to Interrogatory No. 7 negatively impact the party to whom these discovery requests are propounded.

**ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this interrogatory as not relevant to the present proceeding and not calculated to lead to the discovery of admissible evidence. Mahard further objects to this

Interrogatory as vague, overly broad confusing and unreasonably burdensome. Subject to the foregoing objections, the failure of the applicant to meet statutory and regulatory requirements negatively impacts Mahard, and *see* Mahard's answers to Applicant's Requests for Admissions, Requests for Disclosure and Requests for Production.

**INTERROGATORY NO. 9:**

Describe whether the party to whom these discovery requests are propounded has made any written requests for service from potential customers in the proposed area. If so, please identify those requests.

**ANSWER:**

Not Applicable.

**INTERROGATORY NO. 10:**

Describe whether the party to whom these discovery requests are propounded has made any written requests for service to the District in the proposed area. If so, please identify those requests and state when they were made and to whom.

**ANSWER:**

Not Applicable.

**INTERROGATORY NO. 11:**

If there are no requests for service in the proposed area, please describe in detail the need for retail water utility service in the proposed area of which the party to whom these discovery requests are propounded has actual knowledge.

**ANSWER:**

Not applicable.

**INTERROGATORY NO. 12:**

State in detail all reasons why the party to whom these discovery requests are propounded has for opposing the District's CCN applications.

**ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Interrogatory as vague, overly broad confusing and unreasonably burdensome. Subject to the foregoing objections, *see* Mahard's answers to Applicant's Requests for Admissions, Requests for Disclosure and Requests for Production. Subject to the foregoing objections, Mahard opposes the application because it fails to meet applicable statutory and regulatory criteria, including but not limited to the requirement that in order to be granted the application be in the public interest.

**INTERROGATORY NO. 13:**

Please describe the approximate time frame in which the party to whom these discovery requests are propounded could provide water and/ or sewer service in compliance with all applicable Commission rules and statutes to the proposed area on behalf of the District and/ or on its own, including the outer boundaries of the requested area.

**ANSWER:**

Not applicable.

**INTERROGATORY NO. 14:**

Please describe in detail any effects on environmental integrity if the Commission approves the District's CCN applications.

**ANSWER:**

Unknown at this time. Mahard will supplement as required.

VERIFICATION

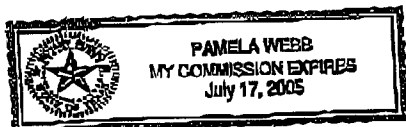
STATE OF TEXAS §

COUNTY OF NUECES §

BEFORE ME, the undersigned authority, on this day personally appeared Dan Tolleson, Jr., who, after being by me duly sworn, stated that he has read the foregoing Answers to Interrogatories propounded by the Denton County Fresh Water Supply District No. 10 and that the same are true and correct.

Dan Tolleson, Jr.  
Dan Tolleson, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 8<sup>th</sup> day of August, 2003, to certify which witness my hand and official seal of office.



Pamela Webb  
Notary Public in and for the State of Texas

**REQUESTS FOR PRODUCTION****REQUEST FOR PRODUCTION NO. 1:**

Provide copies of all documents, tangible items and other demonstrative evidence to be used by the party to whom these discovery requests are propounded at trial.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no such list of exhibits Respondent may use or offer at trial presently exists, but Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

**REQUEST FOR PRODUCTION NO. 2:**

Provide copies of all studies, reports, compilations, treatises, contracts, correspondence, photographs, graphs, diagrams, charts, financial statements, invoices, bids, checks, governmental records, test results, audits, and other documents reviewed and relied upon by any witness for the party to whom these discovery requests are propounded in this cause.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the

rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no such materials are presently available, but Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

### **REQUEST FOR PRODUCTION NO. 3:**

Provide copies of all documentation in the possession or control of the party to whom these discovery requests are propounded that demonstrates that the District cannot provide continuous and adequate potable drinking water service to any portion of its certificated service area subject to this rate change. Please indicate on the document, if not already discernable, which portion of the District's certificated service area is receiving inadequate service.

### **RESPONSE:**

Mahard objects to this request as having no application to this proceeding. Mahard further objects in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no other such materials are presently available, but Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

### **REQUEST FOR PRODUCTION NO. 4:**

Provide copies of all documents, studies, treatises, reports, compilations, computer programs, (with associated data bases), charts, diagrams, maps, pictures, textbooks and other tangible materials reviewed by each testifying expert witness for the party to whom these discovery requests are propounded used or relied upon by that The party to whom these discovery requests are propounded's expert witness in formulating any opinion to be offered at trial by the party to whom these discovery requests are propounded as expert witness testimony. "Expert witness" shall be defined by Tex. R. Evid. 702 subject to the Texas Supreme Court's holding in *E.I. DuPont de*



*Nemours and Co. v. Robinson*, 923 S.W. 2<sup>nd</sup> 549 (Tex. 1997) and the United States Supreme Court's holding in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509, U.S. 579, 113 S. Ct. 2786 (1993). With respect to each produced or identified items, please identify which expert witness reviewed the item and what opinion of that expert witness the item is associated with.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as vague, confusing, unduly burdensome, overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it is inclusive of documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no other such materials are presently available, but Respondent will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

**REQUEST FOR PRODUCTION NO. 5:**

Provide copies of all documents, studies, treatises, reports, compilations, computer programs (with associated data bases), charts, diagrams, maps, pictures, textbooks and other materials reviewed by a non-testifying expert for the party to whom these discovery requests are propounded used or relied upon by that the party to whom these discovery requests are propounded's expert witness in formulating any opinion to be offered at trial by the party to whom these discovery requests are propounded as expert witness testimony. "Expert witness" shall be defined by Tex. R. Evid. 702 subject to the Texas Supreme Court's holding in *E.I. DuPont de Nemours and Co. v. Robinson*, 923 S.W. 2<sup>nd</sup> 549 (Tex. 1997) and the United States Supreme Court's holding in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509, U.S. 579, 113 S. Ct. 2786 (1993). With respect to each produced or identified items, please identify which non-testifying expert reviewed the item and what opinion of the party to whom these discovery requests are propounded's expert witness the item is associated with.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete. precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service

area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as vague, confusing, overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it is inclusive of documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no such materials are presently available, but Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

#### **REQUEST FOR PRODUCTION NO. 6:**

Provide copies of all documentation in possession or control of the party to whom these discovery requests are propounded that demonstrates that any cost, tax, assessment or expense in the District's proposed water utility cost of service (or revenue requirement) is not reasonable and necessary. With respect to each item produced, identify with specificity which cost or expense is being challenged and the expert witness that will sponsor that document and this opinion evidence at trial.

#### **RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no such materials are presently available, but Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

#### **REQUEST FOR PRODUCTION NO. 7:**

Provide copies of all documentation in the possession or control of the party to whom these discovery requests are propounded that demonstrates that any item or plant or investment in the District's proposed water or sewer utility systems are reasonably necessary for prudent utility service purposes. With respect to each item produced, identify with specificity which individual item of

plant is being challenged and the expert witness that will sponsor that document and this opinion evidence at trial.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Mahard further objects to this Request as vague, confusing and contradictory. Subject to the foregoing objections, none at this time. Mahard will supplement as required.

**REQUEST FOR PRODUCTION NO. 8:**

Provide copies of all documents in the possession or control of the party to whom these discovery requests are propounded that demonstrates that the District has or will have facilities used to provide public drinking water service to the public that do not meet the public health or service standards of the TCEQ found in 30 TAC §290.38 *et. seq.* Identify where these facilities are located and when your documents indicate this deficiency.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Mahard further objects to this Request as vague, confusing and contradictory. Subject to the foregoing objections, none at this time. Mahard will supplement as required.

**REQUEST FOR PRODUCTION NO. 9:**

Provide copies of all documents in the possession or control of the party to whom these discovery requests are propounded that demonstrates that the District has or will have facilities used to provide public wastewater service to the public that do not meet public health, service or environmental standards of the TCEQ found in 30 TAC §317 *et. seq.* Identify where these facilities are located and when your documents indicate this deficiency.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Mahard further objects to this Request as vague, confusing and contradictory. Subject to the foregoing objections, none at this time. Mahard will supplement as required.

**REQUEST FOR PRODUCTION NO. 10:**

Provide copies of all documents in the possession or control of the party to whom these discovery requests are propounded that demonstrates that any individual or entity represented by the party to whom these discovery requests are propounded has ever received poor water quality or inadequate water service from The District. With respect to each item produced, identify with specificity which customer was poorly served, when and the expert witness that will sponsor that document and this opinion evidence at trial.

**RESPONSE:**

Not applicable.

**REQUEST FOR PRODUCTION NO. 11:**

Provide copies of all documents in the possession or control of the party to whom these discovery requests are propounded that demonstrates that any individual or entity represented by the party to whom these discovery requests are propounded has ever received poor water quality sewer or

inadequate sewer service from The District. With respect to each item produced, identify with specificity which customer was poorly served, when and the expert witness that will sponsor that document and this opinion evidence at trial.

**RESPONSE:**

Not applicable.

**REQUEST FOR PRODUCTION NO. 12:**

Provide copies of all documentation in the possession or control of the party whom these discovery requests are propounded that indicate what improvements to the District's water utility plant the party to whom these discovery requests are propounded would have the District make to bring it into conformance with 30 TAC §290.38 *et. seq.* and indicate how this would be accomplished.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, none at this time. Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

**RESUEST FOR PRODUCTION NO. 13:**

Provide copies of all documentation in the possession or control of the party whom these discovery requests are propounded that indicate what improvements to the District's water utility plant the party to whom these discovery requests are propounded would have the District make to bring it into conformance with 30 TAC §317 *et. seq.* and indicate how this would be accomplished.

**RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service

area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, none at this time. Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

### REQUESTS FOR ADMISSIONS

1. In light of the settlement between the District and the City of Prosper there is no other water and sewer service provider willing to serve the District's requested service area.

Admit \_\_\_\_\_ Deny  X

Cannot admit or deny because: \_\_\_\_\_

2. The District currently holds a water and sewer utility certificate of convenience and necessity in Denton County, Texas.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

3. The party to whom these discovery requests are propounded does not currently own or operate a public drinking system providing potable domestic retail water utility service to the public for compensation in proximity to the proposed area.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

4. The party to whom these discovery requests are propounded does not currently own or operate a public utility system providing state and federal licensed wastewater utility service to the public for compensation in proximity to the proposed area.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

5. The District is a lawful art. 16, §59 fresh water supply district duly created and existing under the laws of the State of Texas.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

6. The District does not need a CCN to provide water utility service to uncertificated territory not already served by or certificate to another retail public utility.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

7. The District does not need a CCN to provide sewer utility service to uncertificated territory not already served y a certificate to another retail public utility.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

8. Mahard is not in the public utility business and is not capable of providing water or sewer service to the proposed area.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

9. PISD is not in the public utility business and is not capable of providing water or sewer utility service to the proposed area

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

10. The ED is not in the public utility business and is not capable of providing water or sewer utility service to the proposed area.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

11. Mahard's objections to the District's application relate to the development of the proposed area and not to the operation of a water or sewer utility that complies with TCEQ regulations, permits and standards of operations.

Admit \_\_\_\_\_ Deny  X

Cannot admit or deny because: \_\_\_\_\_

12. PISD's objections to the District's application relate to the development of the proposed area and not to the operation of water or sewer utility that complies with TCEQ regulations, permits and standards of operations.

Admit \_\_\_\_\_ Deny  X

Cannot admit or deny because: \_\_\_\_\_

13. The rates and terms of service of a district are set by its board of directors subject to appeal to the TCEQ.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_

14. The SOAH judge will not set the District's rates in this proceeding.

Admit  X  Deny \_\_\_\_\_

Cannot admit or deny because: \_\_\_\_\_



**BELL, TURNEY, COOGAN & RICHARDS, L.L.P.**

Attorneys at Law  
823 Congress, Suite 706  
Austin, Texas 78701  
Telephone: (512) 476-0005  
Telefax: (512) 476-1513

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TX  
C. COOGAN  
L.L.P.

**FAX SERVICE COVER SHEET**

Pages: 3	File Number: 30437
Date: August 8, 2003	From: John B. Turney

Hon. James W. Norman, ALJ	(512) 936-0730
Mark Zeppa	(512) 346-6847
Lara K. Nehman, Sheridan Gilkerson	(512) 239-0606
Blas Coy	(512) 239-6377
Maria Sanchez	(512) 473-2159
Docket Clerk, Office of Chief Clerk	(512) 239-3311

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

Comments: Certificate of Discovery

**CONFIDENTIALITY NOTE**

The information contained in this facsimile message is legally privileged and confidential intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the above address via United States Postal Service. Thank you.

43965

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

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

NOTICE OF WRITTEN DISCOVERY

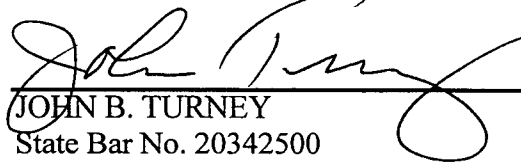
COMES NOW, Mahard Egg Farm, Inc., Intervenor in the above-styled and numbered matter, and states that the following documents have been served on all parties:

1. Response to Executive Director's Request for Disclosure;
2. Objections and Responses to Executive Director's Request for Production;
3. Objections and Responses to Executive Director's Interrogatories.

Respectfully submitted,

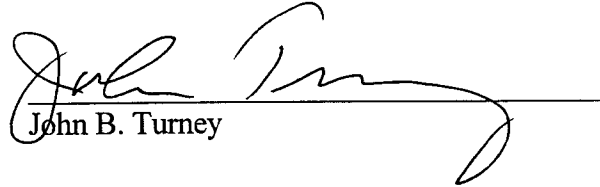
BELL, TURNEY, COOGAN & RICHARDS, L.L.P.  
 823 Congress Avenue, Suite 706  
 Austin, Texas 78701  
 (512) 476-0005 telephone  
 (512) 476-1513 telecopier

SEP 05 2003

  
 \_\_\_\_\_  
 JOHN B. TURNEY  
 State Bar No. 20342500

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded on this the 29<sup>th</sup> day of August, 2003, to all counsel of record by fax or first class mail.

  
John B. Turney

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

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

**MAHARD EGG FARM, INC.'S RESPONSES TO  
THE EXECUTIVE DIRECTOR'S REQUEST FOR DISCLOSURE,  
INTERROGATORIES, AND REQUESTS FOR PRODUCTION**

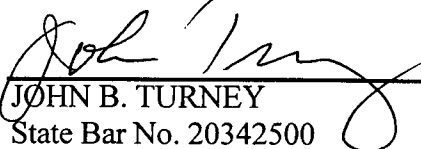
**TO: The Executive Director of the Texas Natural Resource Conservation Commission, by and through the Legal Division of the Commission, Sheridan Gilkerson, Staff Attorney, Post Office Box 13087, Capitol Station, Austin, Texas 78711-3087.**

COMES NOW, MAHARD EGG FARM, INC., Intervenor in the above-styled and numbered cause of action, and files this its Responses to Executive Director's Request for Disclosure, Interrogatories, and Requests for Production pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

Respectfully submitted,

BELL, TURNEY, COOGAN & RICHARDS, L.L.P.  
823 Congress Avenue, Suite 706  
Austin, Texas 78701  
(512) 476-0005 telephone  
(512) 476-1513 telecopier

SEP 05 2003

  
\_\_\_\_\_  
JOHN B. TURNEY  
State Bar No. 20342500

**CERTIFICATE OF SERVICE**

I hereby certify that on this **29th day of August, 2003**, a true and correct copy of the foregoing document in SOAH Docket No. 582-03-2282 was delivered by mail, hand delivered, faxed, or sent by interagency mail to all persons on the attached mailing list.

## GENERAL OBJECTIONS

Mahard objects to these requests for disclosure, and production, and to these interrogatories, to the extent they seek discovery of information that is protected by the attorney client, party communication or attorney work product privileges. Any documents or information protected by such privileges have been withheld. Subject to these General Objections, and to specific objections set forth in individual responses below, answers and documents will be produced herewith or through supplementation.

### REQUEST FOR DISCLOSURE

Pursuant to Texas Rule of Civil Procedure 194, you are requested to disclose the information or material described in Rule 194.2 (c), (e), (f), (h) and (i).

- c. The legal theories and, in general, the factual bases of the Responding Party's claims or defenses.

#### RESPONSE:

The application is deficient and incomplete. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Further, the application fails to demonstrate that the requested authorization serves the public interest pursuant to Section 13.246 of the Water Code for reasons including, but not limited to, the need for the requested service by the applicant, the effect of granting the certificate on the District and on the City of Prosper, the ability of the District to provide adequate service to the proposed service area, the need or benefit of excluding the proposed service area from that of the City of Prosper which surrounds it, the infeasibility or unreasonableness of having service provided by the City of Prosper, and the failure to provide for the needs of the Prosper Independent School District. Mahard reserves the right to supplement this response as appropriate.

- e. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

#### RESPONSE:

Mr. Dan Tolleson, Jr.  
MAHARD EGG FARM, INC.  
P. O. Box 248  
Prosper, Texas 75078-0248  
(972) 347-2421

Mr. Tolleson has been employed by Mahard at Prosper for six years, has served on the Prosper ISD school board and the Economic Development Commission, and is familiar with the property within and around the proposed service area

Mr. Drew Watkins  
Prosper Independent School District  
605 E. 7<sup>th</sup> Street  
Prosper, Texas 75078  
(972) 346-3316

Mr. Watkins serves as Superintendent of the Prosper Independent School District, and is familiar with the needs of the District for utility service in the proposed service area, and with the area surrounding the proposed service area.

Hon. Charles Nicewinger  
City of Prosper  
P.O. Box 307  
Prosper, Texas 75078  
(972) 347-2304

Mr. Nicewinger is Mayor of the City of Prosper and is familiar with the proposed service area and surrounding property, the agreement between the Applicant and the City, and with the City's ability to provide service in the general area.

Mr. Robert D. Petitt, P.E.  
Petitt & Associates  
10720 Miller Road, Suite 218  
Dallas, Texas 75238  
(214) 221 9955

Mr. Petitt prepared the preliminary engineering report for the application.

Mr. Phillip W. Huffines  
Huffines & Partners, Inc.  
8222 Douglas Avenue, Suite 660  
Dallas, Texas 75225  
(214)

Mr. Huffines is the developer that has requested service in the proposed service area.

Mr. Tom Taylor, Executive Director  
Upper Trinity Regional Water District  
P.O. Drawer 305

Lewisville, Texas 75067  
(972) 219-1228

The Upper Trinity Regional Water District would, under the application as proposed, provide wholesale water and wastewater service to the Applicant.

Mr. J. Travis Roberts, Jr., P.E., R.P.L.S.  
Hunter Associates Texas, Ltd.  
8140 Walnut Hill Lane  
One Glen Lakes, Suite 500  
Dallas Tx. 75231-4350  
(214) 369-9171

Mr. Roberts is a consulting engineer familiar with the area and issues related to utility service.

Any and all persons listed by any other party. Mahard will supplement as required.

f. For any testifying expert:

1. The expert's name, address, and telephone;
2. The subject matter on which the expert will testify;
3. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to control of the Responding Party, documents reflecting such information;
4. If the expert is retained by, employed by, or otherwise subject to the control of the Responding Party:
  - a. All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
  - b. The expert's current resume and bibliography.

**RESPONSE:** Mahard is currently seeking an expert and will supplement as required. Mahard retains the right to name additional experts and call as an expert witness any and all of the persons identified by any other party to this litigation as an expert witness although Mahard may or may not agree with the opinions and/or qualifications of such expert witness.

h. Any settlement agreements described in Rule 192.3 (g)

**RESPONSE:** None at this time. Mahard will supplement as required.



- i. Any discoverable witness statements.

RESPONSE: None at this time. Mahard will supplement as required.

### INTERROGATORIES

Interrogatory No. 1. For each person you expect to call as a fact witness at the evidentiary hearing in this matter, please provide: (a) the person's name, business address and telephone number; and (b) a brief description of the testimony you expect that person to provide.

#### **ANSWER:**

Mahard's trial witnesses may include those persons disclosed by any party in accordance with Requests for Disclosure, as well as any additional witnesses identified through the discovery process. Mahard will supplement such list as required. The list may include any fact or expert witness disclosed by any party, and such disclosures are incorporated fully herein by reference.

Interrogatory No. 2. For each expert not listed in the response to the Request for Disclosure whom you have consulted and whose mental impressions and opinions have been reviewed by one of your experts who you expect to testify in this matter, please provide: (a) the consulting expert's name and business address and telephone number; (b) the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with this matter, regardless of when and how the factual information was acquired; (c) the expert's mental impressions and opinions formed or made in connection with this matter and any methods used to derive them; and (d) a curriculum vitae or other detailed description of the expert's qualifications.

#### **ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Interrogatory in that such information is discoverable only through a Request for Disclosure. Subject to the foregoing objection, there are no such persons at this time; if necessary, Mahard will supplement as required.

Interrogatory No. 3. Please describe in detail any financial effects and/or physical effects you would experience if the TCEQ grants the requested service area to the Denton County FWSD

No. 10.

**ANSWER:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this interrogatory as not relevant to the present proceeding and not calculated to lead to the discovery of admissible evidence. Mahard further objects to this Interrogatory as vague, overly broad confusing and unreasonably burdensome. Subject to the foregoing objections, the failure of the applicant to meet statutory and regulatory requirements negatively impacts Mahard and the value of its property, and *see* Mahard's answers to the Executive Director's Requests for Disclosure and Requests for Production.

Interrogatory No. 4. Please describe any effects granting Denton County FWSD No. 10's application would have upon the environmental integrity of the area and specifically upon your property.

**ANSWER:**

Unknown at this time. Mahard will supplement as required.

Interrogatory No. 5. What is your position concerning the effect of amending Denton County FWSD No. 10's water and sewer certificates of convenience and necessity on the requested service area?

**ANSWER:**

The application is deficient and incomplete. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Further, the application fails to demonstrate that the requested authorization serves the public interest pursuant to Section 13.246 of the Water Code for reasons including, but not limited to, the need for the requested service by the applicant, the effect of granting the certificate on the District and on the City of Prosper, the ability of the District to provide adequate service to the proposed service area, the need or benefit of excluding the proposed service area from that of the City of Prosper which surrounds it, the infeasibility or unreasonableness of having service provided by the City of Prosper, and the failure to provide for the needs of the Prosper Independent School District. See also Mahard's answer to Interrogatory No. 3. Mahard reserves the right to supplement this response as appropriate.

Interrogatory No. 6. Please explain how you currently obtain water and sewer service.

**ANSWER:** Private wells; septic systems.

Interrogatory No. 7. Do you have a wastewater discharge permit? If so, in which county? Please explain the relation, if any, of this permit with the area requested by Denton County FWSD No. 10. in this proceeding.

**ANSWER:** Not applicable.

Interrogatory No. 8. Please explain in detail why you object to Denton County FWSD No. 10's application to amend Certificate of Convenience and Necessity Nos.13021 and 20923.

**ANSWER:** The application is deficient and incomplete. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Further, the application fails to demonstrate that the requested authorization serves the public interest pursuant to Section 13.246 of the Water Code for reasons including, but not limited to, the need for the requested service by the applicant, the effect of granting the certificate on the District and on the City of Prosper, the ability of the District to provide adequate service to the proposed service area, the need or benefit of excluding the proposed service area from that of the City of Prosper which surrounds it, the infeasibility or unreasonableness of having service provided by the City of Prosper, and the failure to provide for the needs of the Prosper Independent School District. See also Mahard's answer to Interrogatory No. 3. Mahard reserves the right to supplement this response as appropriate.

VERIFICATION

STATE OF TEXAS §

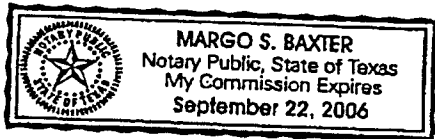
COUNTY OF NUECES §

BEFORE ME, the undersigned authority, on this day personally appeared Dan Tolleson, Jr., who, after being by me duly sworn, stated that he has read the foregoing Answers to Interrogatories propounded by the Executive Director and that the same are true and correct.

*Dan Tolleson, Jr.*  
\_\_\_\_\_  
Dan Tolleson, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 27<sup>th</sup> day of August, 2003, to certify which witness my hand and official seal of office.

*Margo S. Baxter*



## REQUESTS FOR PRODUCTION

Request for Production No. 1. For each consulting expert listed in the answer to Interrogatory No. 2 above, please provide copies of all documents, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of a testifying expert's testimony.

### **RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no such materials are presently available, but Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

Request for Production No. 2. Please provide copies of all documents that support or otherwise relate to your answers to Interrogatory Nos. 3 through 8 above.

### **RESPONSE:**

Mahard objects to this request in that the application is deficient and incomplete, precluding a response. Specifically, those portions of the application based on the 5100 acre proposed service area have not been amended to address the reduction in such proposed service area to approximately 475 acres. Mahard further objects to this Request as overly broad and impermissibly seeking documents from experts contrary to the permissible discovery to experts under Rule 195. Mahard further objects because this requests a marshalling of Mahard's evidence contrary to the rules and may seek documents, if any, subject to the attorney/client or work product privileges. Mahard further objects to this Request in that it includes documents in the Applicant's possession, in the public domain or to which Applicant has an equal or greater right of access. Subject to these objections, no such materials are presently available, but Mahard will comply with any Scheduling Order of the Administrative Law Judge requiring the listing or exchange of exhibits.

Request for Production No. 3. Please provide a map to illustrate the location of your property as it pertains to the requested service area.

**RESPONSE:** See Attachment D, BRIEF IN SUPPORT OF MAHARD EGG FARM'S MOTION TO DISMISS AND RESPONSE TO APPLICANT'S MOTION TO AMEND APPLICATION AND DISMISS INTERVENORS, July 21, 2003.