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

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PUBLIC UTILITY COMMISSION  
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APPLICATION OF DENTON COUNTY	§	BEFORE THE TEXAS
FRESH WATER SUPPLY DISTRICT	§	
NO. 10 TO AMEND WATER AND	§	COMMISSION ON
SEWER CCNS IN DENTON COUNTY	§	
(APPLICATION NOS. 34068-C/34069-C)	§	ENVIRONMENTAL QUALITY

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10's REPLY TO  
MAHARD EGG FARM TO MOTION TO DISMISS

COMES NOW, Denton County Fresh Water Supply District No. 10 (the District), and files its Reply to the Motion to Dismiss of the Mahard Egg Farm, Inc. (Mahard) and its Reply to Mahard's Response to the District's Motion to Dismiss Mahard as an Intervenor from this utility certification docket.

1. MAHARD's MOTION TO DISMISS

Mahard has moved to dismiss the District's pending water and sewer utility certification applications claiming that the District's amendments to the same, pursuant to its service area settlement agreement with the Town of Prosper (Prosper), violated 30 TAC § 281.23(a) because they constitute major amendments under 30 TAC §305.62(c). Mahard is in error. The amendments the District made to its original applications removed requested service area, not add service area. The District had already given notice of all of the area at issue, which notice was admitted into the record at the preliminary hearing without objection. In the District's opinion, reducing the scope of the application is not a

major amendment. However, this decision has been reserved exclusively for the Executive Director to make. [30 TAC §291.23(b)(1)] She has been served with the District - Prosper settlement in this docket and in the companion Prosper sewer CCN case. [SOAH Docket 582-03-1994] The Executive Director has yet to indicate any need to re-notice either docket. She has not chosen to file a motion to abate this docket for re-noticing purposes. No substantial technical change has occurred by reducing service area to be served by the same core utility plant facilities so 30 TAC §281.23(b)(2) does not apply.

Assuming *in arguendo* that Mahard's notice arguments had some kind of merit, dismissal of the application is not the appropriate remedy. The amended application should merely be abated until re-noticed. Notice, however, would not confer standing on Mahard. Mahard would still be gone.

## 2. MAHARD HAS NO STANDING

Mahard concedes its property is adjacent to but not inside the amended requested service area boundaries of the District. [See sworn affidavits of Phillip Huffines filed with the District's original Motion to Dismiss] Mahard claims, "Clearly properties within or immediately adjacent to the proposed service area in a CCN application are potentially affected by the scope and content of that application and the resulting CCN, in a manner distinguishable from the general public." [Mahard Motion page 2, Section II] The District agrees with Mahard as

to persons inside the certificated (or proposed) service area. Texas Water Code §13.250 imposes a near absolute burden on the CCN-holder to provide those persons with continuous and adequate water or sewer utility service. Contrary to Mahard's assertions, however, a CCN-holder has no duty or obligation of any kind towards anyone outside the boundaries of its certificated service area. While Texas Water Code §13.243(1) creates a 1/4-mile service area buffer zone where an investor-owned utility or a water supply corporation may serve without a CCN, such a service extension is strictly voluntary by the utility. Further, it should be remembered that the District is a Texas Constitution Art. 16, §59 water district created under Texas Water Code, Chapter 53. The District is not required to have a CCN to serve any territory not certificated to or served by other retail public utilities, i.e., Prosper. [Texas Water Code §§ 13.00(19) and 13.242] Mahard has no rights at law to demand water or sewer service from the District, now or in the future.

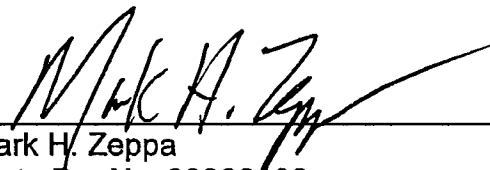
As indicated at the preliminary hearing, Mahard's true interests in this certification docket are strictly related to the proposed urban development within the boundaries of the amended service area. There is no denying that settling 2000 people in proximity to a large poultry operation has consequences. They are not, however, within the jurisdiction of the TCEQ in a utility certification docket. Similarly, there are potential issues of rights-of-way and land use between these parties. The District's powers of condemnation arise under the Texas Constitution and statute and have nothing to do with whether it holds a CCN.

The District is providing water and sewer "service" in the amended service area today as defined by Texas Water Code §13.002(21). It can do this because it is a fresh water supply district and the area is not otherwise served or certificated. None of this affects Mahard or confers standing on an adjacent landowner. Mahard has failed to cite any rule, case or statute that acknowledges the special status it claims in a certification docket.

3. PRAYER

For these reasons, the District requests that Mahard's motion be denied. The District further requests that Mahard be found to have no unique justiciable interest in the amended application and be dismissed as a party. No other party having filed any objection to the District's applications, the District requests that its water and sewer certification applications be remanded to the Executive Director for administrative approval.

Respectfully submitted,



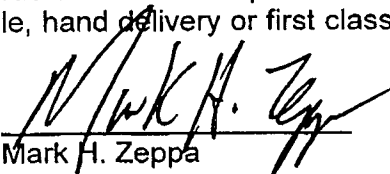
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ATTORNEY FOR DENTON COUNTY  
FRESH WATER SUPPLY DISTRICT  
NO. 10

## CERTIFICATE OF SERVICE

I, Mark H. Zeppa, attorney for DCFWSD #10, certify that true and correct copies of the foregoing pleading were served on the following by facsimile, hand delivery or first class USPS mail on the 7th day of July 2003:

  
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FACSIMILE TRANSMITTAL SHEET

DATE: July 7, 2003

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Re: Application of Denton County Fresh Water Supply District No. 10 to Amend  
Water and Sewer CCN's in Denton County; SOAH Docket No. 582-03-2282;  
TCEQ Docket No. 2003-0033-UCR; Denton County Fresh Water Supply  
District No. 10's Reply to Mahard Egg Farm to Motion to Dismiss

SENDER: Mark Zeppa

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