

- (d) Please identify the projected costs of the facilities that will be used by the Districts to provide service to all areas that are included in their Sewer CCN applications;
- (e) Please state which facilities will be financed by the Districts and which facilities will be financed by other parties; and
- (f) Please identify the expected costs of sewer service to proposed District customers (residential, commercial, or industrial).

ANSWER:

INTERROGATORY NO. 13.

Please state whether the Districts intend to require developers or owners of property within their corporate boundaries to pay for any portion of the costs of making sewer service available to such property and if so, please identify which costs.

ANSWER:

INTERROGATORY NO. 14.

Please identify all owners of land (or representatives or agents thereof), and the location of their property, that is within the area that is the subject of the applications by the Districts that have requested service from or otherwise communicated with the Districts regarding sewer service, and with respect to such requests or communications please describe in detail the nature of such requests or communications.

ANSWER:

INTERROGATORY NO. 15.

Please describe the resources, including qualified personnel, their training and experience including academic and/or field experience, of the Districts and their personnel that establish their managerial capability to provide continuous and adequate sewer service to the areas described in the Districts' Sewer CCN applications.

ANSWER:

INTERROGATORY NO. 16.

Please identify the resources and personnel that demonstrate that the Districts have the technical capability to provide continuous and adequate service to the area described in the Districts' Sewer CCN applications.

ANSWER:

E. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1.

Produce all Documents identified in your answers to Westlake's interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2.

Produce all exhibits including reports, documents, and correspondence that you may seek to introduce in evidence at the hearing.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3.

For each expert you expect to call to testify and for each consulting expert whose opinions or observations a testifying expert will review or has reviewed, produce a curriculum vitae, a list of all cases in which the expert has testified either by deposition or live at trial or hearing, and a list of all articles or publications by the expert.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4.

Produce all Documents and tangible things, including but not limited to all reports, plans, working papers, notes, calculations, diagrams, photographs, physical models, exhibits, compilations of data, drafts, treatises, rules, regulations, guidelines, statutes, policies, procedures, authoritative materials, or other materials prepared by you or for you, submitted by you, for you, or to you, or reviewed by you or for you concerning the Application or the Sewer CCN applications of the Districts.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5.

Please produce copies of all correspondence between the Districts and the persons identified in response to Interrogatory No. 14.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6.

Please provide a copy of the most recent financial reports or audits of the Districts which provide information on the financial stability of the Districts, including debt-equity ratio (if applicable).

RESPONSE:

REQUEST FOR PRODUCTION NO. 7.

Please provide all Documents and any written applications, communications, agreements, discussions, or negotiations concerning the matters referred to in Interrogatories No. 3, 5, 6, 7, 8, 11, 12, 13 and 14.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8.

Please provide a list of all proposed connection fees, rates, and tariffs for the Districts' sewer customers.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9

Please provide any cost of service study and/or rate study performed by or on behalf of the Districts or by any third party concerning the Districts' proposal to provide sewer service within their boundaries.

RESPONSE:

Respectfully submitted,

**LLOYD, GOSSELINK, BLEVINS, ROCHELLE,
BALDWIN & TOWNSEND, P.C.**

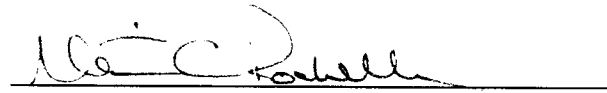
111 Congress Avenue

Suite 1800

Austin, Texas 78701

(512) 322-5830

Fax: (512) 472-0532

A handwritten signature in dark ink, appearing to read "Martin C. Rochelle", is written over a horizontal line.

Martin C. Rochelle

State Bar No. 17126500

**ATTORNEY FOR THE TOWN OF WESTLAKE,
TEXAS**

CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of October, 1999, a true and correct copy of the foregoing was sent by First-Class mail to the following persons.

Mr. Andrew N. Barrett
Suite 1280
816 Congress Avenue
Austin, Texas 78701

Mr. Mike Booth
Booth, Ahrens & Werkenthin
Suite 1515
515 Congress Avenue
Austin, Texas 78701

Ms. Lara Nehman (MC 173)
Staff Attorney
TNRCC
P.O. Box 13087
Austin, Texas 78711-3087

Mr. Blas J. Coy, Jr.
Public Interest Counsel MC-103
TNRCC
P.O. Box 13087
Austin, Texas 78711-3087

Office of the Chief Clerk MC-105
TNRCC
P.O. Box 13087
Austin, Texas 78711-3087

Docket Clerk
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, Texas 78711-3025


Martin C. Rochelle

LLOYD, GOSSELINK, BLEVINS, ROCHELLE,
BALDWIN & TOWNSEND, P. C.
ATTORNEYS AT LAW

111 CONGRESS AVENUE, SUITE 1800
AUSTIN, TEXAS 78701
TELEPHONE (512) 322-5800
TELECOPIER (512) 472-0532

Mr. Rochelle's Direct Line:
(512) 322-5810
mrochelle@lglawfirm.com

807 SOUTH AUSTIN AVENUE*
GEORGETOWN, TEXAS 78626
TELEPHONE (512) 930-1317
*BY APPOINTMENT ONLY

October 18, 1999

96-1901; 1902;
1903; 1904

The Honorable Tommy L. Broyles
Administrative Law Judge
State Office of Administrative Hearings
Suite 502
300 W. 15th Street
P.O. Box 13025
Austin, Texas 78711-3025

VIA HAND DELIVERY

Re: Applications of Town of Westlake and Circle T MUDs Nos. 2
and 3 for Certificates of Convenience and Necessity: SOAH
Docket Nos. 582-97-0134 (Sewer CCN) and 582-97-0175
(Water CCN) (140300:1.2)

TEXAS NATURAL
RESOURCE COMMISSION
OCT 18 1999
CHIEF CLERK'S OFFICE

Dear Judge Broyles:

Please consider this letter as the formal stipulation of the Town of Westlake ("Westlake") that its application for water and sewer Certificates of Convenience and Necessity ("CCNs") in the above-referenced dockets does not include a small area within Westlake's corporate boundaries that is currently served by Trophy Club MUD No. 1 ("Trophy Club"). As we discussed at the September 7, 1999 jurisdictional hearing in these matters, Trophy Club currently provides retail water and sewer utility services to a 44.759-acre tract of land within Westlake's corporate boundaries. In 1986, Westlake consented to the annexation of this tract by Trophy Club, for the provision of retail water and sewer utility services within the area. Westlake has no intention of providing water and sewer services within this area, nor will it seek CCNs in order to provide those services to this area.

I hereby certify that I have forwarded copies of this correspondence to the parties of record in the above-referenced dockets.

Sincerely,



Martin C. Rochelle

The Honorable Tommy L. Broyles
October 18, 1999
Page 2

MCR/ldp

1403\00\ltr991018mcr2

cc: Mayor Scott Bradley
Mr. James Morris
Mr. Larry Fuson, P.E.
Attached Mailing List

MAILING LIST

Mr. Skip Newsom
Fisher & Newsom, P.C.
111 Congress Avenue
Suite 820
Austin, Texas 78701-4043

Mr. Andrew N. Barrett
Suite 1280
816 Congress Avenue
Austin, Texas 78701

Mr. Frank R. Booth
Booth & Dillon
NationsBank Tower, Suite 1212
515 Congress Avenue
Austin, Texas 78701-3503

Mr. Mike Booth
Booth, Ahrens & Werkenthin
Suite 1515
515 Congress Avenue
Austin, Texas 78701

Mr. Hal L. Sanders
Strasburger & Price, L.L.P.
2600 One American Center
600 Congress Avenue
Austin, Texas 78701

Ms. Lara Nehman (MC 173)
Staff Attorney
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Austin, Texas 78711-3087

Mr. Blas J. Coy, Jr.
Public Interest Counsel MC-103
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Austin, Texas 78711-3087

Office of the Chief Clerk MC-105
TNRCC
P.O. Box 13087
Austin, Texas 78711-3087

Docket Clerk
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, Texas 78711-3025

TNR Doc #'s : 1902-1901-UCR ✓

97-1902-UCR

97-1903-UCR

97-1904-UCR

SOAH DOCKET NO. 582-97-0134

APPLICATIONS OF LAKE TURNER § STATE OFFICE
MUD NOS. 2 & 3 (CIRCLE T) § OF
FOR SEWER AND WATER CCNs § ADMINISTRATIVE HEARINGS

ORDER NO. 7

NAMING PARTIES; GRANTING REQUEST TO SEVER AND DISMISS WATER CCN APPLICATION; AND SETTING HEARING SCHEDULE

On September 7, 1999, a prehearing conference was held concerning the application of Circle T Municipal Utility Districts' No. 2 and No. 3 (Circle T)(formerly Lake Turner) application. Evidence of notice was presented and accepted without objection. Parties to this matter are: Circle T, Applicant (represented by Andrew N. Barrett, Attorney); Town of Westlake, Protestant (represented by Martin C. Rochelle, Attorney); Trophy Club (represented by Mike Booth) (named a party to the sewer application in Docket No. 582-97-0175 which is consolidated into this docket below); the Executive Director of the Commission (ED)(represented by Lara Nehman, Attorney); and the Public Interest Counsel (Blas J. Coy, Jr.).

During the hearing, Circle T requested that the Water CCN portion of its application be severed and dismissed. No party objected to the request. Accordingly, the Water CCN application of Circle T is dismissed without prejudice.

As explained further in Order No. 9 of Docket No. 582-97-0175, the sewer portion of that docket is consolidated into this docket. If this was not the intent of the parties during the preliminary hearing, please advise.

CHIEF CLERK'S OFFICE

1999 OCT - 1 P. 13 C.

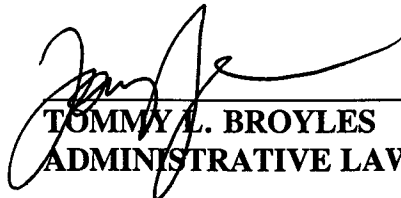
PROPOSED COMMISSION

10/1/99

The following prehearing and hearing schedule was adopted by agreement of the parties:

| | |
|---------------------|-------------------|
| October 19, 1999 | Discovery served |
| November 19, 1999 | Responses served |
| December 10, 1999 | Depositions end |
| January 10-11, 2000 | Hearing on Merits |

Signed this 30th day of September, 1999.



TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE

MAILING LIST
Application of Lake Turner MUD Nos. 2 & 3
SOAH Docket No. 582-97-0134

Mr. Andrew N. Barrett
Attorney at Law
Frost Bank Plaza
816 Congress Ave., Ste. 1280
Austin Texas 78701

Representing: Circle T (formerly Lake Turner)

Martin Rochelle, Attorney
Lloyd, Gosselink, Blevins, Rochelle,
Baldwin & Townsend, P.C.
111 Congress Ave, Ste 1800
Austin Tx 78701

Representing: Town of Westlake

Mr. Frank R. Booth
Mr. Mike Booth
Booth, Ahrens & Werkenthin, P.C.
Nations Bank Tower, Suite 1212
515 Congress Avenue
Austin, Texas 78701-3503

Representing: Trophy Club

Lara Nehman, Staff Attorney
Legal Services Division MC-173
Texas Natural Resource Conservation
Commission - MC - 173
P. O. Box 13087
Austin, Texas 78711-3087

Representing: Executive Director of the
Texas Natural Resource Conservation
Commission

Blas J. Coy, Jr., Attorney
Public Interest Counsel
Texas Natural Resource Conservation
Commission - MC - 103
P. O. Box 13087
Austin, Texas 78711-3087

Representing: the Office of the Public
Interest Counsel of the Texas Natural
Resource Conservation Commission

Tommy L. Broyles
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th St., Suite 502
Austin, Texas 78711-3025

Attn: Docket Clerk
Office of the Chief Clerk MC-105
TNRCC
P. O. Box 13087
Austin, Texas 78711-3087

SOAH DOCKET NOS. 582-97-0134 & 582-97-0175

| | | |
|-----------------------------|---|-------------------------|
| APPLICATIONS OF LAKE TURNER | § | STATE OFFICE |
| | § | |
| MUD NOS. 2 & 3 and TOWN | § | OF |
| | § | |
| OF WESTLAKE FOR CCNs | § | ADMINISTRATIVE HEARINGS |

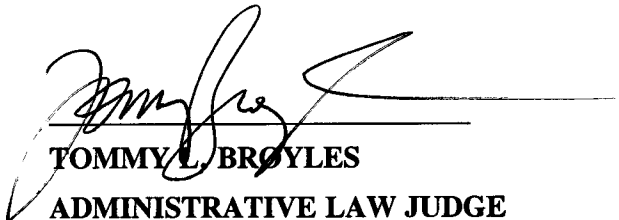
Docket 582-97-0134: ORDER NO. 5

Docket 582-97-0175: ORDER NO. 7

Clarifying Purpose of Hearing

This matter was recently set for evidentiary hearing on September 7, 1999. Because of the similar District Court litigation and the length of time the parties have had to negotiate this matter, the hearing was noticed up to combine the preliminary hearing with the evidentiary hearing. However, should the parties need time for a short discovery period, the hearing on the merits will be continued and the September 7, 1999, hearing will be a preliminary hearing.

Signed this 20th day of July, 1999.


TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE

MAILING LIST

**Applications of Lake Turner MUD Nos. 2 & 3 and Town of Westlake
SOAH Docket Nos. 582-97-0134 & 582-97-0175**

Mr. Timothy G. Green
Coats, Rose, Yale, Holm, Ryman & Lee
800 First City Tower
1001 Fannin
Houston, Texas 77002-6707

Mr. Dwight A. Shupe
Hughs & Luce, L.L.P.
1717 Main Street, Suite 2800
Dallas, Texas 75201

Mr. Lyle H. Drescher
City Manager
City of Keller
PO Box 770
Keller, Texas 76248

Mr. Skip Newson
Fisher & Newson, P. C.
111 Congress Avenue, Suite 820
Austin, Texas 78701-4043

Mr. Frank R. Booth
Booth & Dillon
Nations Bank Tower, Suite 1212
515 Congress Avenue
Austin, Texas 78701-3503

Mr. Robert G. West
Michener, Larimore, Swindle, et al.
3500 City Center Tower II
301 Commerce Street
Fort Worth, Texas 76102-4186

Mr. R. L. Guinn
3500 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

Mr. Tom Allen
Maguire Thomas Partners
9 Village Circle, Suite 500
Westlake, Texas 76262

Mailing List (continued)
Lake Turner MUD Nos. 2 & 3
Town of Westlake

Mr. Hal L. Sanders
Strasburger & Price, L. L. P.
2600 One American Center
600 Congress Avenue
Austin, Texas 78701

Mr. Rick Frederick
624 Walnut Grove
Roanoke, Texas 76262

Lara Nehman, Staff Attorney
Legal Services Division MC-173
TNRCC
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Austin, Texas 78711-3087

Blas J. Coy, Jr., Attorney
Public Interest Counsel MC-103
TNRCC
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Martin Rochelle, Attorney
Lloyd, Gosselink, Blevins & Mathews, P.C.
111 Congress Ave, Ste 1800
Austin Tx 78701

Mr. Andrew N. Barrett
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin Texas 78701

Attn: Docket Clerk
Office of the Chief Clerk MC-105
TNRCC
P. O. Box 13087
Austin, Texas 78711-3087

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
(FOR THE TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION)
AUSTIN, TEXAS

IN THE MATTER OF:) SOAH DOCKET NOS.
) 582-97-0134 &
) 582-97-0175
)
THE APPLICATIONS OF) TNRCC DOCKET NOS.
) 1996-1901-UCR,
LAKE TURNER MUD NOS. 2) 1996-1902-UCR,
) 1996-1903-UCR,
) 1996-1904-UCR,
& 3 and TOWN OF) 1996-1897-UCR &
) 1996-1898-UCR
WESTLAKE FOR CCNs)

PREHEARING CONFERENCE

TUESDAY, SEPTEMBER 7, 1999

BE IT REMEMBERED THAT at 10:22 a.m., on Tuesday, the 7th day of September, 1999, the above-entitled matter came on for hearing at the Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Room AB, Austin, Texas before TOMMY L. BROYLES, Administrative Law Judges; and the following proceedings were reported by machine shorthand by Steven Stogel, a Certified Shorthand Reporter of:

KENNEDY

REPORTING

SERVICE

a record of excellence

APPEARANCES

1
2 MR. ANDREW N. BARRETT, Attorney at
3 Law, 816 Congress Avenue, Suite 1280, Austin,
4 Texas, 78701, and MR. ROBERT WILSON,
5 McGinnis, Lochridge & Kilgore, 919 Congress
6 Avenue, Suite 1300, Austin, Texas, 78701,
7 (512) 495-6012, appearing on behalf of LAKE
8 TURNER MUD.

9 MR. SKIP NEWSOM, Fisher & Newsom,
10 111 Congress Avenue, Suite 820, Austin,
11 Texas, 78701-4043, (512) 477-4121, appearing
12 on behalf of CITY OF KELLER.

13 MR. MARTIN ROCHELLE, Lloyd,
14 Gosselink, Blevins, Rochelle, Baldwin &
15 Townsend, 111 Congress Avenue, Suite 1800,
16 Austin, Texas, 78701, (512) 322-5800, and
17 MR. JAMES W. MORRIS, JR., Goins, Underkosler,
18 Crawford & Langdon, 1601 Elm, Suite 3300,
19 Dallas, Texas, 75201, (214) 969-5454,
20 appearing on behalf of TOWN OF WESTLAKE.

21 MR. MICHAEL J. BOOTH, Booth, Ahrens
22 & Werkenthin, 515 Congress Avenue,
23 Suite 1515, Austin, Texas, 78701-3503,
24 (512) 472-3263, appearing on behalf of TROPHY
25 CLUB.

1 MR. HAL L. SANDERS, Strasburger &
2 Price, 600 Congress Avenue, Suite 2600,
3 Austin, Texas, 78701, appearing on behalf of
4 MAGUIRE THOMAS PARTNERS.
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EXHIBITS

LAKE TURNER MUD MATTER

RECV'D

- | | | |
|----|--|---|
| 1. | Publisher's affidavit from the Star Telegram | 7 |
| 2. | Publisher's affidavit from the Denton Record Chronicle | 7 |
| 3. | Affidavit of notice to neighboring utilities and affected parties | 7 |
| 4. | Publisher's affidavit from the Star Telegram | 7 |
| 5. | Notice of application in the Denton Record Chronicle, publisher's affidavit for MUD No. 3 | 7 |
| 6. | Affidavit of notice to neighboring utilities | 7 |

TOWN OF WESTLAKE MATTER

RECV'D

- | | | |
|----|---|---|
| 1. | Publisher's affidavit from the Star Telegram | 9 |
| 2. | Publisher's affidavit from the Denton Record Chronicle | 9 |
| 3. | Affidavit of notice to neighboring utilities and affected parties | 9 |
| 4. | Notice to neighboring utility system, Walnut Grove Water System, and included map | 9 |

P R O C E E D I N G S

TUESDAY, SEPTEMBER 7, 1999

(10:22 a.m.)

JUDGE BROYLES: Good morning.

Today's date is September 7th, 1999. We have two matters before us; the Town of Westlake, SOAH Docket No. 582-97-0175, and the Lake Turner MUD application, 582-97-0134.

We've got registration slips from numerous representatives here. We've got Fread Houston, representing the Executive Director; Andrew Barrett and Bob Wilson representing Lake Turner -- correct?

MR. BARRETT: Yes, sir.

JUDGE BROYLES: Is Lake Turner now called Circle-T?

MR. BARRETT: Circle-T.

JUDGE BROYLES: Okay. We've got Skip Newsom representing the City of Keller; Martin Rochelle representing the Town of Westlake; and Mike Booth representing Trophy Club. We also have Hal Sanders, who's in the back, representing Maguire Thomas Partners.

Any other representatives here

1 today that I did not mention? Yes.

2 MR. MORRIS: I'm Jim Morris.
3 I also represent the Town of Westlake.

4 JUDGE BROYLES: Okay. Prior
5 to going on the record, we marked the
6 jurisdictional exhibits. And I want to note
7 for the record that the jurisdictional
8 exhibits do not notice of today's hearing.
9 It notices of a hearing some time ago --
10 several years ago, as a matter of fact.
11 However, at the time that this hearing was
12 noticed, I came over here -- I granted a
13 continuance at the request of the parties.
14 At the time this hearing was noticed, I came
15 over here and sat in one of these courtrooms
16 in order to see if anybody would show up that
17 didn't get my granting of the continuance.
18 So we were here, and if anyone had shown up
19 and wanted to protest these applications,
20 they would have been given notice of this
21 matter here today by being put on the mailing
22 list and following all of the proceedings
23 over the past couple of years.

24 I've marked -- for Lake Turner MUD,
25 we have -- ED No. 1 is the publisher's

1 affidavit from The Star Telegram. ED No. 2
2 is the publisher's affidavit from the Denton
3 Record Chronicle. ED No. 3 is the affidavit
4 of notice to neighboring utilities and
5 affected parties. ED No. 4 is publication
6 of -- publisher's affidavit in the Star
7 Telegram. And this is for the sewer --

8 MR. BARRETT: Your Honor, you
9 may be seeing a separate application for Lake
10 Turner 2 and for Lake Turner No. 3.

11 JUDGE BROYLES: That's right.
12 We've got MUD No. 2 and MUD No. 3. And then
13 we have ED No. 5, which is the notice of
14 application in the Denton Record Chronicle,
15 publisher's affidavit for MUD No. 3. And
16 then I have ED No. 6, which is the affidavit
17 of notice to neighboring utilities.

18 Okay. Any objection to any of the
19 exhibits mentioned in the Lake Turner matter?

20 MR. NEWSOM: No.

21 JUDGE BROYLES: Okay. Hearing
22 none, ED 1, ED 2, ED 3, ED 4, ED 5, and ED 6
23 are entered into the record.

24 (ED Exhibit Nos. 1 through 6
25 received)

1 JUDGE BROYLES: Okay. For the
2 Town of Westlake, I have marked as ED
3 No. 1 -- this is the publisher's affidavit
4 from the Star Telegram. ED No. 2,
5 publisher's affidavit in the Denton Record
6 Chronicle. ED No. 3 is the affidavit of
7 notice to neighboring utilities and affected
8 parties. I also have marked ED No. 4, which
9 has a map on it that the Executive Director
10 wanted entered into the record, which kind of
11 explains the requested areas of service. It
12 also has a notice to one neighboring utility
13 system, Walnut Grove Water System.

14 Any objections to ED 1, 2, 3, or 4?

15 MR. ROCHELLE: I'm sorry. I
16 didn't see No. 4. I didn't see that that was
17 a jurisdictional exhibit.

18 MR. NEWSOM: Is the map and
19 the Walnut Grove notice part of the same
20 exhibit, or are those different?

21 JUDGE BROYLES: No. It --
22 well, it was handed to me together. They're
23 two different documents, really. I'm
24 assuming that perhaps that notice wasn't
25 attached to ED 3, which is the affidavit of

1 notice to neighboring utilities.

2 MR. ROCHELLE: May I see ED 3,
3 please? No objection.

4 JUDGE BROYLES: Are there any
5 objections to ED 1 through 4 in the Town of
6 Westlake? Hearing none, ED 1 through 4 are
7 entered into the record.

8 (ED Exhibit Nos. 1 through 4
9 received)

10 JUDGE BROYLES: Okay. I'm
11 trying to decide how we should proceed in
12 naming parties to these two matters. Let's
13 take up the Town of Westlake first and their
14 applications. Mr. Rochelle, we have -- the
15 Town of Westlake is a statutory party. The
16 Executive Director and the Public Interest
17 Counsel are statutory parties. At this time,
18 are there any other entities who would like
19 to seek party status in the Town of Westlake
20 matter?

21 MR. NEWSOM: Yes, Your Honor.
22 Again, I'm Skip Newsom, for the record,
23 representing the City of Keller. The City of
24 Keller is the owner of water certificate of
25 convenience and necessity No. 10975. The

1 Westlake application proposes dual
2 certification. The City of Keller is opposed
3 to such dual certification and requests party
4 status.

5 JUDGE BROYLES: Any objections
6 to the City of Keller's request?

7 MR. ROCHELLE: No objection.

8 JUDGE BROYLES: Hearing none,
9 City of Keller is granted party status.

10 Any other requests for party status
11 in the Town of Westlake matter?

12 MR. BOOTH: Trophy Club
13 requests party status in the Westlake matter.
14 My name is Mike Booth, for the record, again.
15 We have -- a portion of the City of Westlake
16 CCN application is in Trophy Club's district,
17 and we're -- I believe we're going to work it
18 out, but we are requesting party status.

19 JUDGE BROYLES: Any objection
20 to the request by Trophy Club?

21 MR. ROCHELLE: We have no
22 objection, Your Honor. I do want you to know
23 that the Town of Westlake consented to the
24 annexation of a portion of the territory that
25 Mr. Booth has just identify by Trophy Club

1 MUD 1 so that they could serve an area that
2 was being developed prior to Westlake's
3 ability to serve them.

4 That annexation consent includes a
5 metes and bounds description of the area
6 within Westlake that would have been annexed
7 or was annexed to Trophy Club, and so I think
8 the parties have reached an agreement that
9 will identify that portion of Westlake's
10 corporate boundaries by that metes and bounds
11 description. We've already notified the
12 staff, through correspondence of a couple of
13 years ago now, that we were not seeking
14 certification of that area.

15 So really it's up -- I think we're
16 at a point where we're just going to define
17 for you or Mr. Holcomb, I guess, the metes
18 and bounds description of that area that we
19 are not seeking certification.

20 JUDGE BROYLES: And just carve
21 that area out from your application?

22 MR. ROCHELLE: Yes, sir. And
23 we have no objection to Trophy Club's
24 participation.

25 JUDGE BROYLES: Then Trophy

1 Club is granted party status.

2 MR. BARRETT: For the record,
3 I'm Andy Barrett, representing Lake Turner
4 Municipal Utility Districts 1, 2, and 3. We
5 did file a protest in the water CCN
6 application by Westlake. We withdraw that.
7 For the record, we support their application
8 for water certificate of convenience and
9 necessity.

10 We do, however, object to
11 requesting party status in their sewer
12 application. Part of all three MUDs are
13 within the city limits, and our objection or
14 protest goes only toward their application as
15 it would include areas within the three
16 districts.

17 JUDGE BROYLES: Okay.

18 MR. BARRETT: So anything
19 outside the districts we have no objection to
20 and would support their application.

21 JUDGE BROYLES: Any objections
22 to party status for Lake Turner or Circle-T
23 into the Westlake matter?

24 MR. NEWSOM: Just for
25 clarification, Your Honor, is party status

1 being sought for all three MUDs or just
2 Nos. 2 and 3, the ones who have competing
3 applications?

4 JUDGE BROYLES: Well, on
5 behalf of --

6 MR. BARRETT: All three MUDs
7 filed protests, but only two MUDs
8 requested -- well, only two MUDs filed an
9 application.

10 MR. NEWSOM: Okay.

11 MR. BARRETT: And it would
12 only be for sewer that we were protesting,
13 not water.

14 JUDGE BROYLES: So is it now
15 called Circle-T 1, 2, and 3?

16 MR. BARRETT: Circle-T 1, 2,
17 and 3.

18 MR. ROCHELLE: Well, Judge,
19 let me say the Town of Westlake objects to
20 the grant of party status to these three
21 districts because they entered into a
22 settlement agreement last year wherein they
23 agreed to dismiss their applications and
24 support Westlake's. So we think they're
25 bound by the terms of the settlement

1 agreement, and we'd object.

2 JUDGE BROYLES: Do you have a
3 copy of the settlement agreement?

4 MR. ROCHELLE: Yes, sir.

5 MR. BARRETT: And I would say
6 there's a -- there's precedent to that.
7 Besides, Your Honor, settlement agreements
8 outside are not part of this hearing. The
9 settlement talks we had would not be germane
10 to this hearing.

11 MR. ROCHELLE: Certainly
12 settlement negotiations aren't, Your Honor,
13 but this is not a matter that's just been,
14 you know, talked about. They've actually
15 signed an agreement.

16 MR. BARRETT: Again, Your
17 Honor, that would be for a separate matter.
18 If we're not living up to that -- Hillwood
19 and the MUDs who negotiated this are well
20 aware of what's in it, and we're still here
21 seeking party status. So we don't believe
22 that the settlement agreement has been fully
23 consummated.

24 JUDGE BROYLES: When I look at
25 this matter --

1 MR. BARRETT: As far as the
2 sewer goes.

3 JUDGE BROYLES: I just
4 consider whether or not they're an affected
5 party, whether they have a particular
6 interest that would give them status in this
7 matter. I really can't get into interpreting
8 your settlement agreement. That would be for
9 another court to do. And then you could
10 also -- you could have the court come in and
11 try to prevent them from being a party
12 through some type of mandamus action. So I
13 don't think that I'll get to interpreting the
14 settlement agreement.

15 Any other objection to Lake
16 Turner 1, 2, and 3 being granted party
17 status? Hearing none, Lake Turner 1, 2, and
18 3 are granted party status.

19 Any other entities?

20 MR. SANDERS: Your Honor, Hal
21 Sanders representing Maguire Thomas Partners.
22 We are in the same position as Trophy Club
23 MUD. We would request party status for the
24 purposes of clarifying and implementing the
25 limiting language that Mr. Rochelle has

1 talked about.

2 JUDGE BROYLES: I thought
3 y'all were going to have this all settled
4 when you got here today. I didn't think
5 there would be a lot of people wanting party
6 status, but such is litigation.

7 All right. Maguire Thomas
8 Partners, any objections?

9 MR. ROCHELLE: No, sir.

10 MR. NEWSOM: I'm sorry.
11 You're assuming that all the parties have
12 been in constant communication, and that is
13 not exactly correct with regard to all these
14 matters. What -- I wonder if Mr. Sanders
15 could explain what Maguire Thomas Partners'
16 interest in this proceeding might be.

17 MR. SANDERS: Your Honor,
18 Maguire Thomas Partners approached the City
19 of Westlake originally about 17 years ago
20 asking for service. We were denied service
21 by the City of Westlake and told that we
22 should go to Trophy Club. We did that. We
23 spent millions and millions of dollars
24 building the infrastructure in order to do
25 that. We are the largest customer of Trophy

1 Club, and we are very satisfied with the
2 current service we are getting from Trophy
3 Club, and we do not want to change that
4 service to the City of Westlake.

5 MR. BOOTH: They're in the
6 disputed area that we're working out.
7 They're the big customer in that area.

8 JUDGE BROYLES: Okay. Any
9 objection to Maguire Thomas Partners?
10 Hearing none, party status is granted. And I
11 understand everybody wants to be a player
12 until everything is signed, sealed, and
13 delivered.

14 Okay. Let's take up the Lake
15 Turner MUD request. Okay. Mr. Barrett -- so
16 y'all have withdrawn part of this application?

17 MR. BARRETT: Yes, Your Honor.
18 We've withdrawn the application as far as it
19 relates to a water certificate of convenience
20 and necessity. At this point, we're seeking
21 only the sewer portion of that.

22 JUDGE BROYLES: Okay. So,
23 procedurally, I believe that I'll need to
24 sever the two and then dismiss the water from
25 our docket. Is that correct?

1 MR. BARRETT: That's fine with
2 us.

3 JUDGE BROYLES: Okay. Is
4 there any objection to -- I'm willing to do
5 it if anybody has an easier way to handle
6 this, but I've still got the water
7 application before me, I believe, at this
8 point. I don't recall ever --

9 MR. ROCHELLE: I think the
10 docket number that you have for Lake Turner
11 MUDs 2 and 3 incorporates a water and sewer
12 CCN application in each of those two
13 districts.

14 MR. BARRETT: That's right.

15 MR. ROCHELLE: So if you -- I
16 think that your inclination is right, that
17 you'll sever the water and sewer portions of
18 each of those two applications and dismiss
19 the water portions of each of those two
20 applications.

21 JUDGE BROYLES: So is there
22 any objection to a severance of the water
23 application for the Lake Turner applications?
24 Hearing none, I'm going to sever the water,
25 and then we'll go forward with the sewer.

1 MR. ROCHELLE: So you're going
2 to sever the water and actually dismiss that
3 portion of those two applications?

4 JUDGE BROYLES: Yeah. Before
5 I name parties, I'll go ahead -- even if
6 you're not named a party, speak up now if you
7 have an objection to the dismissal of the
8 water CCN application from Lake Turner.
9 Okay. Hearing none, that will be dismissed
10 from the SOAH docket, and I'll do that in a
11 formal order also.

12 Okay. Let's go on to the Lake
13 Turner sewer. Lake Turner is a statutory
14 party and the Executive Director and the
15 Public Interest Counsel are statutory
16 parties. Any other entity that wishes to
17 seek party status at this time?

18 MR. ROCHELLE: Your Honor, I'm
19 Martin Rochelle. I represent the Town of
20 Westlake. We have competing applications for
21 really all of the areas incorporated within
22 Lake Turner MUDs 2 and 3 sewer applications.

23 JUDGE BROYLES: Any objection?
24 Hearing none, Town of Westlake is granted
25 party status. Any other entity that wishes

1 to seek party status in the Lake Turner
2 matter? All right. That will be all the
3 parties in the Lake Turner matter.

4 Okay. At this point I have a
5 motion to sever from Mr. Rochelle. So have I
6 already handled your concerns?

7 MR. ROCHELLE: No, sir, you
8 haven't. You've handled a different concern.

9 JUDGE BROYLES: Okay.

10 MR. ROCHELLE: But I -- we did
11 file a motion to sever the water portion of
12 the competing applications from the sewer
13 portion of those applications. It's a little
14 confusing, but let me see if I can articulate
15 it. We have a situation in Westlake where
16 our water application is really only
17 contested by the City of Keller and now
18 Trophy Club MUD and the developer within
19 Trophy Club MUD. The entities that we have
20 competing applications for, the Lake Turner
21 MUDs, are only on the sewer side of this
22 aisle now.

23 I think we've reached an agreement
24 with Trophy Club today -- and I'd ask
25 Mr. Booth to correct me if I'm wrong. But I

1 think all we really need to do with the
2 Trophy Club MUD issue is to get a copy of the
3 metes and bounds description that's
4 accompanying the ordinance that authorizes
5 this annexation of a portion of Westlake by
6 the District to settle our issue with the
7 District, because we have already identified
8 in writing for the staff in a letter to
9 Mr. Holcomb almost two years ago that we
10 weren't seeking to secure water CCN coverage
11 for -- or sewer for Trophy Club MUD, that our
12 application didn't intend -- we didn't intend
13 to incorporate the Salado Business Park,
14 which is that portion of Trophy Club's
15 annexed area that's within Westlake, into our
16 application.

17 So I'm pretty confident that in the
18 very near turn -- I'd say in a couple of
19 weeks -- we're going to be back with you --
20 they're going to be withdrawing their
21 protest, because we're going to be -- we've
22 already amended our application, and I'm not
23 sure how the staff has dealt with that in
24 terms of processing this application. But we
25 certainly are stipulating on the record today

1 that we're not intending to serve the area
2 that we have agreed to allow Trophy Club to
3 annex within its corporate boundaries. And I
4 think that really all we're looking for now
5 is something that will enable Your Honor and
6 the staff to actually draw a line around an
7 area that they serve.

8 Our -- Keller is certificated to a
9 portion of Westlake's corporate boundaries,
10 and they came in lawfully and secured a
11 certificate of convenience and necessity for
12 that area. We have met with Keller. My
13 mayor and the city manager of Keller have
14 met. Mr. Newsom and I have met. I am fairly
15 confident -- again, I'd ask Mr. Newsom to
16 correct me if I overstate this. I'm fairly
17 confident that we're going to be able to
18 address the issues related to the dual
19 certification that we requested that Keller
20 opposes by our ability to either carve out
21 areas that Keller is certificated to or to
22 reach an agreement with Keller on how to
23 reimburse Keller for any infrastructure they
24 have in those areas and to enable Westlake to
25 serve.

1 I will propose shortly, if this
2 matter is severed, a discovery schedule that
3 contemplates a time for Keller and Westlake
4 to decide whether they can reach such an
5 agreement or not. So on the one side we've
6 got, I think, some fairly straightforward
7 issues related to water service within
8 Westlake's corporate boundaries that I'm
9 confident will be resolved. They'll either
10 be resolved fairly shortly, or we'll go
11 forward.

12 On the other hand, we have a sewer
13 CCN application that, in a meaningful way, is
14 really only contested by Lake Turner MUDs or
15 Circle-T MUDs. I'm less optimistic,
16 candidly, with our opportunity to settle
17 those issues. And I say that because we've
18 been in ongoing discussions with those
19 districts for years about these issues, and
20 we entered into a settlement agreement that
21 seemed to put those issues to bed almost a
22 year ago, and clearly they're not since Lake
23 Turner MUD is here today to protest our
24 application.

25 So I would envision a different

1 discovery schedule with Lake Turner MUD than
2 I do with these other parties. I just see
3 that there are potentially issues related to
4 the water service versus the sewer service
5 that are going to be distinct. And I think
6 it would be cleaner and easier, really, for
7 all of the parties to deal with them in a
8 severed way or -- and your rules contemplate
9 that severance, when it's in the best
10 interest of the parties and can expedite
11 matters, might be appropriate. So we would
12 request that the matters be severed for those
13 factual and sort of legalistic reasons.

14 JUDGE BROYLES: Okay. So for
15 practical purposes, if the two were severed,
16 in the water portion the parties would be the
17 City of Keller, Trophy Club, and Maguire
18 Thomas. The sewer would probably be Lake
19 Turner. Is that correct?

20 MR. ROCHELLE: Trophy Club
21 also has sewer facilities, but again I think
22 that we -- I mean, my mayor is here, and the
23 general manager of the District is here. I
24 think they've agreed that, yes, we're going
25 to settle this matter on a particular basis,

1 which is this metes and bounds description,
2 and I'm just confident that -- I've been
3 wrong today already according to my wife, but
4 I think that this is a real potential here to
5 settle with those guys. So --

6 JUDGE BROYLES: Okay. Well,
7 let's take up the motion to sever, and then
8 afterwards I want to make sure that we
9 distinguish which parties are in which docket
10 if it's granted. Any objection to the motion
11 to sever the water and sewer in the Town of
12 Westlake's application?

13 MR. NEWSOM: City of Keller
14 supports the motion.

15 MR. BOOTH: So does Trophy
16 Club.

17 MR. SANDERS: So does Maguire
18 Thomas.

19 MR. BARRETT: We have no
20 objection to it.

21 JUDGE BROYLES: Hearing no
22 objection, the motion is granted.

23 Okay. For the water docket, the
24 City of Keller, Trophy Club, Maguire Thomas
25 Partners are all parties to that. Does Lake

1 Turner have any interest in another docket at
2 all?

3 MR. BARRETT: We don't have an
4 application pending and we are not a party,
5 so I don't think we have much interest at
6 this time.

7 JUDGE BROYLES: So you do not
8 wish to have party status in that docket?

9 MR. BARRETT: That is correct.

10 JUDGE BROYLES: Have I left
11 out any parties that wish to be -- that has
12 an interest in the water docket? Okay. So
13 we have separated that water docket, which I
14 will have it assigned a new docket number and
15 will send it to the parties -- the City of
16 Keller, Trophy Club, and Maguire Thomas -- as
17 the parties other than the applicant and the
18 Executive Director and Public Interest
19 Counsel.

20 Now, for the sewer docket, I know
21 that Lake Turner wants to be a party. Trophy
22 Club also wishes to have party status?

23 MR. BOOTH: Yes, sir.

24 JUDGE BROYLES: Does any other
25 entity wish to have party status in the sewer

1 docket?

2 MR. ROCHELLE: And Westlake.

3 JUDGE BROYLES: Yeah, Westlake
4 is the applicant. Okay. Hearing none, then,
5 for the sewer docket, Lake Turner, Trophy
6 Club, the applicant City of Westlake, the
7 Executive Director, and the Public Interest
8 Counsel are the parties.

9 Okay. Other than the discovery
10 schedules and the setting of the hearing on
11 the merits, are there other motions I need to
12 address at this time? Okay. Let's go off
13 the record and informally discuss the
14 discovery schedule.

15 (Recess: 10:46 a.m. to 11:00 a.m.)

16 JUDGE BROYLES: Okay. While
17 we were off the record, the parties discussed
18 dates for both the water docket and the sewer
19 docket. The water docket dates are as
20 follows by agreement unless -- if anyone
21 objects, please tell me now. December 13th,
22 discovery is due; January 14th, responses are
23 due; Depositions by February 4th, 2000; and
24 the hearing on the merits is February 17th
25 and 18th. Any objection to that schedule?

1 Hearing none, that's the way the schedule
2 will be set.

3 For the sewer docket, we have
4 written discovery by October 19th; responses
5 by November 19th; depositions by
6 December 10th; and the hearing on the merits
7 on January 10th and 11th. Is there any
8 objection to that schedule? Hearing none,
9 both schedules are set by agreement of the
10 parties.

11 Okay. Any other issues that we
12 need to address at this time? All right.
13 That concludes this hearing. Thank you very
14 much.

15 (Hearing concluded at 11:02 a.m.)
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C E R T I F I C A T E

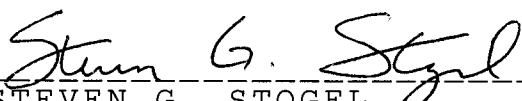
STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Steven Stogel, a Certified
Shorthand Reporter in and for the State of
Texas, do hereby certify that the
above-mentioned matter occurred as
hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings
of such were reported by me or under my
supervision, later reduced to typewritten
form under my supervision and control and
that the foregoing pages are a full, true,
and correct transcription of the original
notes.

IN WITNESS WHEREOF, I have hereunto
set my hand and seal this 21st day of
September, 1999.



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August 30, 1999

To: The Honorable Tommy Broyles **From:** Andy Barrett

Fax: **Pages:** 3

Phone: **Date:** 08/30/99

Re: Docket Numbers 582-97-0175 and 582-97-0134 **CC:**

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August 30, 1999

The Honorable Tommy Broyles
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Re: Applications of the Town of Westlake and Lake Turner Municipal Utility Districts No. 2 and No. 3 for Certificates of Convenience and Necessity; SOAH Docket No.'s 582-97-0175 and 582-97-0134

Dear Judge Broyles:

This letter is to advise you that Circle T Municipal Utility Districts No. 2 and No. 3 (the MUD's)(formerly known as Lake Turner Municipal Utility Districts No. 2 and No. 3) are withdrawing their applications for the water utility service Certificates of Convenience and Necessity (CCN). In addition, the MUD's withdraw their protest from and now support the Town of Westlake's application for water utility service CCN.

At this time, the MUD's believe they are close to completing an agreement with the Town of Westlake which would result in the MUD's withdrawing their sewer service CCN applications and their protest against the Town of Westlake's application.

In order to give the parties more time to resolve this matter without incurring additional cost of public funds involved in commencing the hearing, the MUD's request that the Administrative Law Judge abate the proceeding for an additional 60 days.

In requesting this abatement, the MUD's are mindful of the Administrative Law Judge's patience in allowing this matter to be resolved amicably over the past two years. The MUD's also are

current settlement on the water utility service applications and the nearness of the agreement on the remainder of the issues, the MUD's would request this final abatement.

The MUD's have spoken to counsel for the Town of Westlake and the Executive Director concerning this request. The Executive Director's counsel verbally supported the abatement. Counsel for Westlake has not yet responded.

Thank you for your time and attention to this matter. By copy of this letter, I am notifying those persons on SOAH's mailing list for the two above-referenced docket numbers and to other interested parties.

Very truly yours,


Andrew N. Barrett

SOAH DOCKET NOS. 582-97-0134 & 582-97-0175

APPLICATIONS OF LAKE TURNER §
MUD NOS. 2 & 3 and TOWN §
OF WESTLAKE FOR CCNs §

STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

Docket 582-97-0134: ORDER NO. 6 96-1901

Docket 582-97-0175: ORDER NO. 8 96-1898

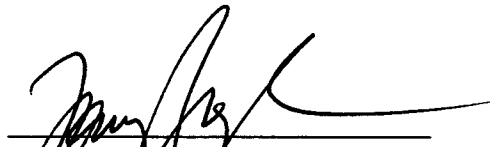
DENYING THE REQUEST FOR CONTINUANCE

On August 30, 1999, Circle T Municipal Utility Districts No. 2 and No. 3 (Circle T) filed a request to continue the September 7, 1999, preliminary hearing for 60 days. Circle T advised that it is withdrawing its applications for the water utility service Certificates of Convenience and Necessity (CCN) as well as its protest of the Town of Westlake's (Westlake) application. Circle T continued that it is also close to completing an agreement with Westlake regarding sewer service CCN applications.

On September 1, 1999, Westlake filed its opposition to this motion. Westlake argues that this matter ". . . has dragged on for quite some time and it is now time to proceed with the hearings associated with the applications." Westlake adds that the negotiations may continue while preparations begin for the evidentiary hearing. Westlake also filed a Motion to Sever the water CCN applications from the sewer CCN applications.

The Motion for Continuance is DENIED. The parties may continue negotiations after the preliminary hearing. The Motion to Sever will be addressed at the preliminary hearing.

Signed this 3rd day of September, 1999.


TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE

9/9/99 m.v.

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MAILING LIST
Applications of Lake Turner MUD Nos. 2 & 3 and Town of Westlake
SOAH Docket Nos. 582-97-0134 & 582-97-0175

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