

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

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Austin, Texas 78701

Mr. Rick Frederick  
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Roanoke, Texas 76262

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

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  
MUD NOS. 2 & 3 and TOWN  
OF WESTLAKE FOR CCNs

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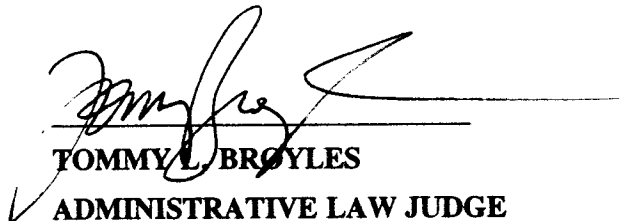
STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

✓Docket 582-97-0134: ORDER NO. 5 1994-1901-UCR  
✓Docket 582-97-0175: ORDER NO. 7 1994-1898-UCR

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 20<sup>th</sup> day of July, 1999.

  
TOMMY L. BROYLES  
ADMINISTRATIVE LAW JUDGE

CHIEF CLERK  
JUL 23 1999

7/23/99  
M.V.

**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  
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City Manager  
City of Keller  
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500 North Akard Street  
Dallas, Texas 75201

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

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TNRCC  
P. O. Box 13087  
Austin, Texas 78711-3087

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. 4**

**Docket 582-97-0175: ORDER NO. 6**

**Setting Evidentiary Hearing**

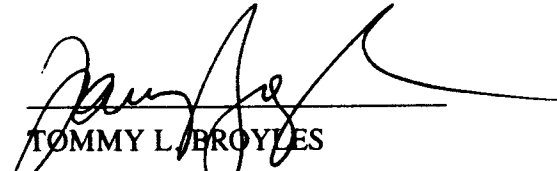
On March 6, 1997, this matter was referred to SOAH. On March 21, 1997, the case was continued due to ongoing mediation. An abatement of the proceeding was granted on October 24, 1997, due to pending litigation in state court that would have an impact on the applications.

On numerous occasions, the parties have filed status reports requesting that the abatement continue. The latest report, filed on March 5, 1999, requested abatement for an additional six months due to ongoing settlement negotiations.

The time has come for the parties to settle this matter, go to hearing, or have the cases dismissed for want of prosecution. If a mediator would be helpful, please advise so that one may be provided.

This matter is set for evidentiary hearing on **September 7, 1999**. The hearing will convene at 10:00 a.m., in the SOAH courtrooms on the 11<sup>th</sup> floor, Stephen F. Austin Building, 1700 North Congress Ave. in Austin, Texas.

Signed this 13<sup>th</sup> 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**

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mrochelle@lglawfirm.com

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

September 1, 1999

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

**VIA FACSIMILE**

Re: Applications of the Town of Westlake and Lake Turner MUDs  
Nos. 2 and 3 for Certificates of Convenience and Necessity;  
SOAH Docket No. 582-97-0175 and No. 582-97-0134  
(140300:1.2)

Dear Judge Broyles:

I am in receipt of a letter dated August 30, 1999 to you from counsel for Lake Turner MUDs No. 2 and No. 3 concerning the above-referenced matter. Therein, these MUDs withdraw their protest to the application of my client, the Town of Westlake, for a water certificate of convenience and necessity ("CCN"). The MUDs also request a 60-day continuance of the administrative hearing on these CCN matters scheduled to begin September 7, 1999.

The Town of Westlake does not support this request for an extension of the administrative proceedings in this matter. As you have previously noted in your July 13, 1999 Pre-hearing Order, this matter has been pending before you for quite some time. Westlake and the MUDs have been engaged during that period in negotiations to resolve their differences, including the matter of the appropriate entity to provide water and wastewater services within Westlake's corporate boundaries. Indeed, the parties entered into a Settlement Agreement last fall which, presumably, served to resolve their differences with regard to these service matters. Therein, the MUDs agreed to withdraw their applications for water and sewer CCNs and support Westlake's application. The MUDs also agreed to



dissolve themselves. Westlake desires, and expects, the MUDs to honor their obligations under the Settlement Agreement.

While Westlake agrees with the assertion made by counsel for the MUDs that the parties are close to resolving their differences, this matter has dragged on for quite some time and it is now time to proceed with the hearings associated with the applications. Westlake will continue to work with the MUDs to resolve any ongoing dispute, and will certainly use any period of time between the jurisdictional hearing on September 7 and the evidentiary hearing on the applications to insure that the terms of our Settlement Agreement are complied with. However, at this time my client wishes to pursue the administrative process as proposed in your recent Prehearing Orders.

If you have questions concerning this matter or I may be of service to you or the State Office of Administrative Hearings, please feel free to call on me at your convenience.

Sincerely,



Martin C. Rochelle

MCR/ldp

1403\00\ltr990901mcr10

cc: Service List

Mr. Scott Bradley

Mr. James Morris

Mr. Larry Fuson, P.E.

CERTIFICATE OF SERVICE

I hereby certify that on this the 1<sup>st</sup> day of September, 1999, a true and correct copy of the foregoing was sent by First Class mail, by facsimile, or by hand-delivery to the following persons.

Mr. Timothy G. Green  
Coats, Rose, Yale, Holm, Ryman & Lee  
800 First City Tower  
1001 Fannin  
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Martin C. Rochelle

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

Austin - Georgetown  
P.O. Box 1725  
Austin, Texas 78767  
Telephone: (512) 322-5800  
Facsimile: (512) 472-0532

**TELECOPIER COVER SHEET**

September 1, 1999

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: The Honorable Tommy L. Broyles

FIRM: SOAH

TELECOPY PHONE NUMBER: 475-4994

VERIFICATION PHONE NUMBER: 475-4993

CLIENT NUMBER: 140300

FROM: Martin C. Rochelle

NUMBER OF PAGES: 4 + Cover Sheet

COMMENTS:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5800.  
THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL  
INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW,  
DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED  
ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY  
NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL  
SERVICE. THANK YOU.

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

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September 1, 1999

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

**VIA FACSIMILE**

Re: Applications of the Town of Westlake and Lake Turner MUDs  
Nos. 2 and 3 for Certificates of Convenience and Necessity:  
SOAH Docket No. 582-97-0175 and No. 582-97-0134  
(140300:1.2)

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The Honorable Tommy Broyles  
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Page 2

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MCR/ldp

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**ANDREW N. BARRETT**

ATTORNEY

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WRITER'S E-MAIL ADDRESS ANB@BARRETLAW.NET

August 30, 1999

The Honorable Tommy Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> 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 aware of the Administrative Law Judge's July 13<sup>th</sup>, 1999 Orders to proceed. However, in view of



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

✓ EED  
9/17/99

ANDREW N. BARRETT

ATTORNEY

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816 CONGRESS AVENUE  
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WRITER'S E-MAIL ADDRESS ANB@BARRETLAW.NET

August 30, 1999

CHIEF CLERKS OFFICE

1999 SEP -3 AM 10:17

TEXAS NATURAL  
RESOURCE COMMISSION  
COMMISSION

The Honorable Tommy Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> 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:

~~1996~~  
TNRECC-1996-1898-UCR  
TNRECC-1996-1901-UCR

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Very truly yours,

  
Andrew N. Barrett

**FISHER & NEWSOM, P.C.**

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---

**FACSIMILE TRANSMITTAL**

**TO:** Lyle Dresher  
City Manager

**DATE:** September 1, 1999

**WITH:** City of Keller

**FAX NO.:** (817) 431-2837

**CLIENT/  
MATTER:** Keller/CCN Dispute

**FROM:** Skip Newsom

**CODE:** 133

**SUBJECT:** Applications of the Town of Westlake and Lake Turner MUD

**Total number of pages, including this cover sheet:** 3

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**Comments/Special Instructions:**

CHIEF CLERK'S OFFICE

SEP 2 11 11 AM

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CITY OF KELLER  
CLERK'S OFFICE

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If problems are encountered in receiving this transmission, please call (512) 477-4121.

Fisher & Newsom, P.C.

Attorneys at Law

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✓ EED 9/13/99

Skip Newsom\*

September 1, 1999

Via Facsimile

The Honorable Tommy L. Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

CHIEF CLERK'S OFFICE

SEP 2 1999

REC'D THE CLERK'S OFFICE  
SEP 2 1999

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 Nos. 582-97-  
0134 and 582-97-0175

1996-1898-UCK

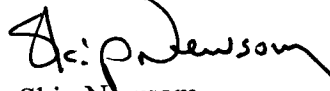
1996-1901-UCK

Dear Judge Broyles:

I am in receipt of Andy Barrett's letter to you of August 30, 1999 on behalf of Lake Turner MUDs No. 2 and No. 3 requesting the abatement and continuance of the above proceeding for 60 days. I am also in receipt of Martin Rochelle's letter to you of this date on behalf of the Town of Westlake opposing such abatement. The City of Keller also opposes the requested abatement and 60 day continuance.

On account of the withdrawal of the Lake Turner MUDs' protest to the water CCN Application of Westlake, the remaining sewer CCN issues between Westlake and Lake Turner MUDs appear to be quite factually and legally distinct from the water related CCN issues between the City of Keller and Town of Westlake. Accordingly, it would appear to be in the interests of all parties that the two matters be severed for the purpose of discovery and hearing. I believe that Mr. Rochelle will be drawing up a motion to such effect for your consideration on September 7, 1999 and, subject to review of same, the City of Keller will likely join in such a severance request.

Yours very truly,

  
Skip Newsom

SN/keg

cc: Lyle Drescher  
Service List

\*Board Certified, Administrative Law--Texas Board of Legal Specialization

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**TELECOPIER COVER SHEET**

September 2, 1999

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CLIENT NUMBER: 140300

FROM: Martin C. Rochelle

NUMBER OF PAGES: 8 + Cover Sheet

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

September 2, 1999

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

VIA HAND DELIVERY

Re: Applications of the Town of Westlake and Lake Turner MUDs  
Nos. 2 and 3 for Certificates of Convenience and Necessity:  
SOAH Docket No. 582-97-0175 and No. 582-97-0134  
(140300:1.2) 1996-1901 UCR 1996-1898-UCR

Dear Judge Broyles:

Enclosed please find the original and one copy of my client, the Town of Westlake's, Motion to Sever in the above-referenced matter. Please file-stamp the extra copy and return it to me via our messenger.

Thank you for your attention to this matter. If you have questions concerning this request, or I may be of service to you, please feel free to call on me at your convenience.

Sincerely,



Martin C. Rochelle

MCR/ldp

1403\00\ltr990902mcr11

ENCLOSURE

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

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

APPLICATIONS OF THE TOWN  
OF WESTLAKE AND  
LAKE TURNER MUD NOS. 2 & 3  
FOR WATER AND SEWER  
CERTIFICATES OF CONVENIENCE  
AND NECESSITY

§  
§  
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§  
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§

BEFORE THE  
STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

OFFICE OF THE CLERK

OFFICE OF THE CLERK

OFFICE OF THE CLERK

**MOTION TO SEVER**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

COMES NOW, The Town of Westlake, Texas ("Town" or "Westlake") and files this Motion to Sever the applications of the Town and Lake Turner MUDs No. 2 and No. 3 ("Lake Turner MUDs") for a water Certificate of Convenience and Necessity ("CCN") from the applications of the Town and Lake Turner MUDs for a sewer CCN, and for cause would respectfully show the Administrative Law Judge the following:

1.

Westlake filed its application for water and sewer CCNs with the Texas Natural Resource Conservation Commission ("TNRCC") on or about May 28, 1996. The Town's application seeks water and sewer CCNs for retail services within its corporate boundaries. By letter of October 29, 1996 to TNRCC, the Town amended its application to exclude from the area to be certificated that portion of the Town's corporate boundaries currently served by Trophy Club MUD No. 1 ("Trophy Club").



Lake Turner MUDs are located wholly within the corporate boundaries of Westlake. Lake Turner MUDs filed applications for water and sewer CCNs with TNRCC on or about August 29, 1996. By letter of August 30, 1999, Lake Turner MUDs withdrew their applications for water CCNs, and expressed support for Westlake's application for water CCN.

## II.

With regard to the water CCN Westlake seeks through its application, as amended, such application was originally protested by Lake Turner MUDs, the City of Keller ("Keller"), which currently serves areas within Westlake's corporate boundaries, and Trophy Club, which currently serves an area within Westlake's corporate boundaries. As noted above, Westlake has amended its application to exclude the area currently served by Trophy Club. Westlake expects to stipulate into the record of this proceeding that its water and sewer CCN applications do not now seek to authorize a certificated service area for water or sewer service to the area currently served by Trophy Club within Westlake's corporate boundaries. Lake Turner MUDs have now withdrawn their protests to Westlake's water CCN application, and have withdrawn their own competing applications for water CCNs. Therefore, Westlake expects that only Keller will participate in Westlake's application for a water CCN. Westlake is currently engaged in negotiations with Keller to resolve Keller's concerns with Westlake's application for water CCN.

With regard to the sewer CCNs at issue, Westlake and Lake Turner MUDs have competing applications for common service areas within Westlake's corporate boundaries. As noted, Westlake has amended its application to exclude from its sewer CCN the area currently served by Trophy Club within Westlake's corporate boundaries. Keller has not protested Westlake's sewer CCN application, inasmuch as Keller affords no sewer service and has no sewer facilities within Westlake's corporate boundaries.

### III.

Based on the foregoing, Westlake believes it would be much more efficient to distinguish, factually and legally, the water-related CCN issues that will be considered by Westlake and Keller in these proceedings from the sewer-related CCN issues that will be considered by Westlake and Lake Turner MUDs. Westlake believes it would be in the interest of all parties that these two matters be severed for the purpose of discovery and hearing on the merits. This proposed severance will be cost efficient for the parties, inasmuch as the discovery necessary to each of the matters will be more focused, and the issues to be considered in each matter will be clarified.

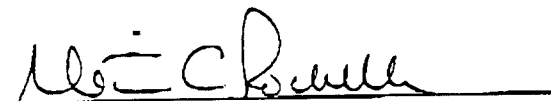
WHEREFORE, PREMISES CONSIDERED, the Town of Westlake moves that the application of the Town for a water CCN, and the application of the Town and Lake Turner MUDs for a sewer CCN be severed for the purposes of discovery and hearing, and for such other and further relief to which the Town may be entitled.

Respectfully submitted,

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

111 Congress Avenue  
Suite 1800  
Austin, Texas 78701  
(512) 322-5810  
FAX: (512) 472-0532

By:



Martin C. Rochelle  
State Bar No. 17126500

**ATTORNEY FOR THE TOWN OF WESTLAKE**

CERTIFICATE OF SERVICE

I hereby certify that on this the 2<sup>nd</sup> day of September, 1999, a true and correct copy of the foregoing was sent by First Class mail, by facsimile, or by hand-delivery to the following persons.

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City Manager  
City of Keller  
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Mr. R. L. Guinn  
3500 Lincoln Plaza  
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Mr. Tom Allen  
Maguire Thomas Partners  
9 Village Circle, Suite 500  
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Mr. Hal L. Sanders  
Strasburger & Price, L.L.P.  
2600 One American Center  
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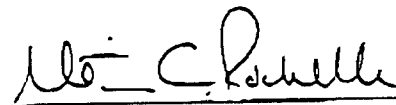
Mr. Rick Frederick  
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Roanoke, Texas 76262

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  
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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. 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78711-3025

A handwritten signature in cursive script, appearing to read "Martin C. Rochelle", written over a horizontal line.

Martin C. Rochelle

✓ 320 9/3/99

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September 1, 1999

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

VIA FACSIMILE

RECEIVED  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
SEP - 2 1999  
CHIEF CLERK'S OFFICE

Re: Applications of the Town of Westlake and Lake Turner MUDs  
Nos. 2 and 3 for Certificates of Convenience and Necessity:  
SOAH Docket No. 582-97-0175 and No. 582-97-0134  
(140300:1.2) 1996-1901-CCR 1996-1898-CCR

Dear Judge Broyles:

I am in receipt of a letter dated August 30, 1999 to you from counsel for Lake Turner MUDs No. 2 and No. 3 concerning the above-referenced matter. Therein, these MUDs withdraw their protest to the application of my client, the Town of Westlake, for a water certificate of convenience and necessity ("CCN"). The MUDs also request a 60-day continuance of the administrative hearing on these CCN matters scheduled to begin September 7, 1999.

The Town of Westlake does not support this request for an extension of the administrative proceedings in this matter. As you have previously noted in your July 13, 1999 Pre-hearing Order, this matter has been pending before you for quite some time. Westlake and the MUDs have been engaged during that period in negotiations to resolve their differences, including the matter of the appropriate entity to provide water and wastewater services within Westlake's corporate boundaries. Indeed, the parties entered into a Settlement Agreement last fall which, presumably, served to resolve their differences with regard to these service matters. Therein, the MUDs agreed to withdraw their applications for water and sewer CCNs and support Westlake's application. The MUDs also agreed to

The Honorable Tommy Broyles  
September 1, 1999  
Page 2

dissolve themselves. Westlake desires, and expects, the MUDs to honor their obligations under the Settlement Agreement.

While Westlake agrees with the assertion made by counsel for the MUDs that the parties are close to resolving their differences, this matter has dragged on for quite some time and it is now time to proceed with the hearings associated with the applications. Westlake will continue to work with the MUDs to resolve any ongoing dispute, and will certainly use any period of time between the jurisdictional hearing on September 7 and the evidentiary hearing on the applications to insure that the terms of our Settlement Agreement are complied with. However, at this time my client wishes to pursue the administrative process as proposed in your recent Prehearing Orders.

If you have questions concerning this matter or I may be of service to you or the State Office of Administrative Hearings, please feel free to call on me at your convenience.

Sincerely,



Martin C. Rochelle

MCR/ldp

1403\00\ltr990901mcr10

cc: Service List

Mr. Scott Bradley

Mr. James Morris

Mr. Larry Fuson, P.E.



CERTIFICATE OF SERVICE

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September 2, 1999

The Honorable Tommy Broyles  
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ENCLOSURE

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

CHIEF CLERK'S OFFICE

SEP 7 PM 7

FILED FOR COMMISSION

SEP 7 PM 7

RECEIVED COMMISSION  
SEP 7 PM 7

CHIEF CLERK'S OFFICE

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

APPLICATIONS OF THE TOWN	§	
OF WESTLAKE AND	§	BEFORE THE
LAKE TURNER MUD NOS. 2 & 3	§	STATE OFFICE
FOR WATER AND SEWER	§	OF
CERTIFICATES OF CONVENIENCE	§	ADMINISTRATIVE HEARINGS
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Respectfully submitted,

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(512) 322-5810

FAX: (512) 472-0532

By:



Martin C. Rochelle

State Bar No. 17126500

**ATTORNEY FOR THE TOWN OF WESTLAKE**

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\_\_\_\_\_  
Martin C. Rochelle

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Skip Newsom\*

July 19, 1999

The Honorable Tommy L. Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
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 Nos. 582-97-0134 and 582-97-0175

Dear Judge Broyles:

The City of Keller is in receipt of your July 13, 1999 Order setting this matter for evidentiary hearing. This letter requests dismissal of the above proceedings, or, alternatively, a pre-hearing conference in lieu of the September 7, 1999 evidentiary hearing scheduled by such Order.

The Westlake and Lake Turner MUD applications each seek certification to an area that is within Keller's water CCN No. 10975 and Keller has opposed such proposed encroachments of its service area. The proceedings have been abated since their inception in early 1997 to allow the applicants to adjudicate and/or settle various differences affecting their legal and fiscal capacities. Keller has not participated in either the litigation or the mediation efforts between the applicants.

Despite the amount of time allowed by the ALJ, the Town of Westlake and Lake Turner MUDs have not fully resolved their judicial and contractual differences and it is unlikely that any such resolution will be forthcoming in the near future. During the lengthy abatement of these proceedings, no discovery has been conducted by Keller or other parties and new substantive and procedural requirements applicable to CCN applications have been adopted by the Texas

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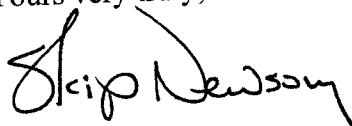
Honorable Tommy Lee Broyles  
July 19, 1999  
Page 2

Legislature and implemented by the Texas Natural Resource Conservation Commission. The pending applications have not been amended to satisfy current regulatory requirements.

The City of Keller submits that it is greatly disadvantaged by the current process and progress of this docket, whereby the competing applicants have been granted essentially a moratorium on discovery and unlimited time to negotiate, strategize, prepare and finalize their respective positions to adversely impact the City's CCN without affording the City of Keller any means by which to determine (a) what agreements, if any, applicants have reached between themselves, (b) how applicants propose to serve the area, (c) their managerial, financial and technical capability of providing such service, (d) their efforts, if any, to obtain regional service and (e) how either applicant proposes to address currently applicable statutory and regulatory criteria. The City of Keller should not be further penalized or disadvantaged by the applicants' inability to timely resolve their own internal differences.

Accordingly, the City requests that the applications of the Town of Westlake and Lake Turner MUD Nos. 2 and 3 be dismissed for want of prosecution, without prejudice to their refiling, should either or both parties desire to refile under currently applicable criteria. Such refiled applications, if any, should address current regulatory requirements as the pending applications do not. In the alternative, the City of Keller requests that the September 7, 1999 proceeding, currently scheduled for evidentiary hearing on the merits, be converted to a pre-hearing conference to allow the parties to preliminarily identify issues and develop a briefing, discovery and hearing schedule for same.

Yours very truly,

A handwritten signature in black ink that reads "Skip Newsom". The signature is written in a cursive, flowing style.

Skip Newsom

SN/keg

cc Service List

SERVICE LIST

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

*Lake Turner MUD Nos. 2 and No. 3*

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

*Hillwood/Willowbend, Ltd.  
Lake Turner MUD Nos. 2 and 3*

Mr. Lyle H. Dresher  
City Manager  
City of Keller  
P.O. Box 770  
Keller, Texas 76248

*City of Keller*

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(not protest; request for notice of hearing)*

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*Lake Turner MUD Nos. 2 and 3*

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Skip Newsom\*

July 19, 1999

The Honorable Tommy L. Broyles  
Administrative Law Judge  
State Office of Administrative Hearings  
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 Nos. 582-97-  
0134 and 582-97-0175

1996-1901-UCB - 1996-1898-UCB

7/22/99  
mv.

Dear Judge Broyles:

The City of Keller is in receipt of your July 13, 1999 Order setting this matter for evidentiary hearing. This letter requests dismissal of the above proceedings, or, alternatively, a pre-hearing conference in lieu of the September 7, 1999 evidentiary hearing scheduled by such Order.

The Westlake and Lake Turner MUD applications each seek certification to an area that is within Keller's water CCN No. 10975 and Keller has opposed such proposed encroachments of its service area. The proceedings have been abated since their inception in early 1997 to allow the applicants to adjudicate and/or settle various differences affecting their legal and fiscal capacities. Keller has not participated in either the litigation or the mediation efforts between the applicants.

Despite the amount of time allowed by the ALJ, the Town of Westlake and Lake Turner MUDs have not fully resolved their judicial and contractual differences and it is unlikely that any such resolution will be forthcoming in the near future. During the lengthy abatement of these proceedings, no discovery has been conducted by Keller or other parties and new substantive and procedural requirements applicable to CCN applications have been adopted by the Texas

\*Board Certified, Administrative Law--Texas Board of Legal Specialization

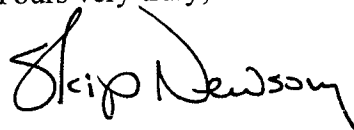
Honorable Tommy Lee Broyles  
July 19, 1999  
Page 2

Legislature and implemented by the Texas Natural Resource Conservation Commission. The pending applications have not been amended to satisfy current regulatory requirements.

The City of Keller submits that it is greatly disadvantaged by the current process and progress of this docket, whereby the competing applicants have been granted essentially a moratorium on discovery and unlimited time to negotiate, strategize, prepare and finalize their respective positions to adversely impact the City's CCN without affording the City of Keller any means by which to determine (a) what agreements, if any, applicants have reached between themselves, (b) how applicants propose to serve the area, (c) their managerial, financial and technical capability of providing such service, (d) their efforts, if any, to obtain regional service and (e) how either applicant proposes to address currently applicable statutory and regulatory criteria. The City of Keller should not be further penalized or disadvantaged by the applicants' inability to timely resolve their own internal differences.

Accordingly, the City requests that the applications of the Town of Westlake and Lake Turner MUD Nos. 2 and 3 be dismissed for want of prosecution, without prejudice to their refile, should either or both parties desire to refile under currently applicable criteria. Such refiled applications, if any, should address current regulatory requirements as the pending applications do not. In the alternative, the City of Keller requests that the September 7, 1999 proceeding, currently scheduled for evidentiary hearing on the merits, be converted to a pre-hearing conference to allow the parties to preliminarily identify issues and develop a briefing, discovery and hearing schedule for same.

Yours very truly,

A handwritten signature in black ink that reads "Skip Newsom". The signature is written in a cursive, flowing style.

Skip Newsom

SN/keg

cc Service List



## SERVICE LIST

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