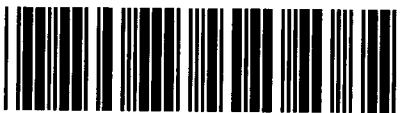




Control Number: 44541



Item Number: 33

Addendum StartPage: 0

**PUC DOCKET NO. 44541**

**APPLICATION OF CITY OF HEATH TO  
AMEND A CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND  
TO DECERTIFY A PORTION OF  
FORNEY LAKE WATER SUPPLY  
CORPORATION'S SERVICE AREA IN  
ROCKWALL COUNTY**

§  
§  
§  
§  
§  
§

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

2015 JUL 20 PM 2:55

**CITY OF HEATH'S MOTION TO COMPEL  
RESPONSES TO CITY OF HEATH'S FIRST REQUEST FOR INFORMATION**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

NOW COMES the City of Heath ("Heath") and files its Motion to Compel Forney Lake Water Supply Corporation ("Forney Lake") to respond to Heath's First Request for Information.

**I. PROCEDURAL HISTORY**

Heath filed its First Request for Information on Forney Lake on April 10, 2015. On April 20, 2015, Forney Lake filed objections to Heath's RFIs 1-2.j; 1-6 and 1-8. Those objections were resolved by agreement. Forney Lake filed no objection to Heath's RFIs which are the subject of this motion to compel. Forney Lake filed its response to Heath's RFIs on April 30, 2015 and supplemented its response on May 8, 2015. *See* Attachment 1. Forney Lake has made no other filings related to Heath's RFIs.

**II. HEATH'S MOTION TO COMPEL**

**A. INTRODUCTION.**

Forney Lake has failed to provide any response to Heath's RFIs 1-2.f, g, h and i. Forney Lake has provided non-responsive answers to Heath's RFI 1-2 b, c, and e, 1-8, and has used a witness who lacks personal knowledge to sponsor an answer to Heath's RFI 1-4. The information sought through these RFI's is relevant to the issue of whether any of Forney Lake's property will be rendered useless or valueless if Heath's application for single certification pursuant to Texas Water Code §13.255 is granted, and if so, the amount of compensation that would be just and reasonable for the property.

**B. HEATH's 1-2 f, g, h, and i.**

Heath's RFI 1-2 provides as follows:

"If any of Forney Lake's property may be rendered useless and valueless if single certification as requested by Heath in its application is granted, please identify each separate component of such property and provide the following information:

- a. The type or nature of the property (e.g. water lines, water storage facilities, pumps, valves, meters, vaults, easements, etc.).
- b. The location or address of the property, and for water lines or easements the beginning and end point of the property that may be rendered useless or valueless.
- c. A map depicting the location of the property in Forney Lake's system.
- d. The size and capacity of the property.
- e. The use of the property before single certification and the use of the property, if any, after single certification.
- f. The year in which the property was placed in service.
- g. Forney Lake's original cost to acquire and install the property.
- h. Financing used to acquire the property.
- i. Forney Lake's current book value for the property.
- j. State whether Heath has requested through its application for single certification that the property be conveyed or transferred to Heath."

Forney Lake has provided no response to the Heath's RFIs 1-2 f, g, h, and i even though it has not objected to the requests and has had more than eighty days to respond. The RFI seeks information that is not privileged and that clearly is relevant to the subject matter of this proceeding. Accordingly, Forney Lake should be compelled to provide responses to HEATH 1-2 f, g, h, and i.

**C. HEATH 1-2 b, c and e.**

Heath's requests 1-2 b and c seek information pertaining to the location or address of each specific component of Forney Lake's properties it contends will be rendered useless or valueless if Heath's application to decertify is granted, specifically including the beginning and end point of water lines or easements. Forney Lake responded to Heath's RFIs 1-2 b and c by stating "See map attached as Exhibit Heath RFI 1-2." However, the map Forney Lake attached to Forney Lake's response identifies what appears to be all of Forney Lake's system in a two-county area and fails to provide any specific location or address information for property it contends will be rendered useless or valueless. Moreover, the map is virtually unreadable due to its scale. Accordingly, Forney Lake's production of the map is unresponsive to the Heath's RFI 1-2 b and c.

Similarly, Forney Lake states in its response to HEATH 1-2 e that “[a] *share* of the facilities will no longer be utilized [to provide potable water service] after single certification.” However, Forney Lake did not attempt to describe or quantify the share for each separate component of its facilities it contends will no longer be used to provide potable water service, and it should be compelled to do so.

In summary, Forney Lake should be compelled to provide a map of sufficient scale that it can be useful in identifying which of its facilities and properties on the map it contends would be rendered useless or valueless including, for water lines or easements, the beginning and end point. If Forney Lake contends that only “a share of each separate facility is affected,” it should describe and quantify that share.

#### **D. HEATH 1-4**

Heath’s RFI 1-4 asked Forney Lake to provide all master plans, or other planning or engineering reports describing Forney Lake’s water supply system used to supply retail water service within the corporate limits of Heath. Forney Lakes response to the RFI was “none” sponsored by Ms. Robin Baley. However, in her deposition Ms. Baley testified that she did not know whether Forney Lake had any master plans or planning reports. *See* Attachment 2, Transcript of Robin Baley’s deposition at 100:23–101:12 & 103:22–104:9.

Accordingly, Forney Lake has failed to respond to the RFI because its response was sponsored by a person who lacks personal knowledge as to whether Forney Lake has any of the requested master plans, or other planning or engineering reports describing applicable portions of Forney Lake’s water supply system. Forney Lake should be compelled to respond with a sponsor who has personal knowledge of the requested information.

#### **E. HEATH 1-8 and 1-9.**

Heath asked Forney Lake through RFI 1-8 to admit that all of its facilities currently used to provide retail public utility service to its customers before the grant of single certification as requested by Heath will continue to be used for that purpose provided the single certification request is granted. Through RFI 1-9 Heath asked Forney Lake to identify the specific components of its facilities that it did not admit would continue to be used. Forney Lake’s April 30 response admitted to this RFI 1-8. After the City of Heath filed its Response to Order No. 2 citing to this admission as confirmation of the City’s understanding that none of Forney Lake facilities would be rendered useless or valueless due to single certification, Forney Lake

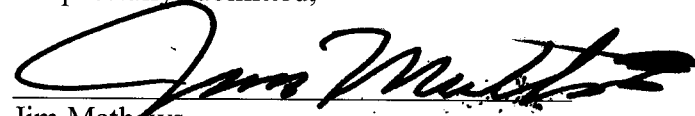
“supplemented” its response to RFI 1-8 by stating “[a]t this time [Forney Lake] can admit, *except for specific* distribution water lines located in the single certification area . . . .” Forney Lake provided no response to RFI 1-9.

Forney Lake’s answer is nonresponsive. Forney Lake has not identified the “specific distribution water lines” referenced in its answer. Forney Lake should be compelled to identify the specific water distribution lines it contends will not continue to be used after the request for single certification is granted.

### **III. REQUESTED RELIEF**

All of the information requested by Heath is clearly relevant to the subject matter of this proceeding. Moreover, Forney Lake failed to object to these requests and has had more than eighty days to provide responsive information. Heath, therefore, respectfully requests that the Administrative Law Judge enter an order compelling Forney Lake to provide responses to Heath’s RFIs as described above within three business days.

Respectfully submitted,



Jim Mathews  
State Bar No. 13188700  
Mathews & Freeland, LLP  
8140 N. Mopac Expy, Ste 2-260  
Austin, Texas 78759  
Telephone (512) 404-7800  
Facsimile (512) 703-2785

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Motion to Compel was served on all parties of record in this proceeding on this 20th day of July, 2015, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

Arturo Rodriguez, Jr.  
Attorney for Forney Lake  
Russell & Rodriguez LLP  
1633 Williams Dr., Building 2, Suite 200  
Georgetown, Texas 78632  
866-929-1641 (fax)

A.J. Smullen  
Attorney, Legal Division Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
512-936-7268 (fax)

  
\_\_\_\_\_  
Jim Mathews

## **Attachment 1**

**PUC DOCKET NO. 44541**

<b>APPLICATION OF CITY OF HEATH</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TO AMEND A CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY AND</b>	<b>§</b>	
<b>TO DECERTIFY A PORTION OF</b>	<b>§</b>	<b>OF</b>
<b>FORNEY LAKE WATER SUPPLY</b>	<b>§</b>	
<b>CORPORATION'S SERVICE AREA IN</b>	<b>§</b>	
<b>ROCKWALL COUNTY</b>	<b>§</b>	<b>TEXAS</b>

**FORNEY LAKE WATER SUPPLY CORPORATION'S  
RESPONSE TO CITY OF HEATH'S FIRST REQUEST FOR INFORMATION**

Comes now Forney Lake Water Supply Corporation ("FLWSC") and files its Response to the City of Heath's First Request for Information. FLWSC received the City's request on April 10, 2015. This Response is therefore timely filed. All parties may treat the answers as if they were filed under oath.

FLWSC files these responses without agreeing to the relevancy of the information sought and without waiving its right to object at the time of hearing to the admissibility of the information provided herein.

**FLWSC'S RESPONSES:**

HEATH 1-1. If any of Forney Lake's property may be rendered useless and valueless if single certification as requested by Heath in its application is granted, please propose a time during regular business hours when Heath and its representatives may inspect such property.

a. Proposed date and time of inspection:

Counsel for FLWSC will work with City of Heath to coordinate a mutually agreeable time for inspection.

Prepared by Robin Baley; sponsoring witness Robin Baley.



HEATH 1-2. If any of Forney Lake's property may be rendered useless and valueless if single certification as requested by Heath in its application is granted, please identify each separate component of such property and provide the following information:

- a. The type or nature of the property (e.g. water lines, water storage facilities, pumps, valves, meters, vaults, easements, etc.).
  - b. The location or address of the property, and for water lines or easements the beginning and end point of the property that may be rendered useless or valueless.
  - c. A map depicting the location of the property in Forney Lake's system.
  - d. The size and capacity of the property.
  - e. The use of the property before single certification and the use of the property, if any, after single certification.
  - f. The year in which the property was placed in service.
  - g. Forney Lake's original cost to acquire and install the property.
  - h. Financing used to acquire the property
  - i. Forney Lake's current book value for the property.
  - j. **(Revised as Agreed)** Please admit that Heath's application does not indicate any assets or facilities to be transferred to Heath.
- a-i. FLWSC is gathering this information. This request will be supplemented.
- j. Heath's application does not appear to indicate any assets or facilities to be transferred to Heath

Responses a-i. Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

Responses j. Prepared by Robin Baley; sponsoring witness Robin Baley.

HEATH 1-3 Please produce all documents concerning or relating to Forney Lake's belief that its property may be rendered useless and valueless if single certification as requested by Heath in its application is granted.

FLWSC is gathering this information. This request will be supplemented.

Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

HEATH 1-4. Please provide all master plans, or other planning or engineering reports describing Forney Lake's water supply system used to supply retail water service within the corporate limits of Heath.

None.

Prepared by Robin Baley; sponsoring witness Robin Baley.

HEATH 1-5 Please identify any customers to whom Forney Lake currently provides retail water service within the tracts identified in "Attachment 12.A" of Heath's application for single certification.

FLWSC serves customers at the following addresses:

260 Terry Lane, 809 Hubbard, 405 Hubbard, 520 Meadowview, 206 Crips, 524 Hubbard, 300 Terry Lane, and 255 Meyers

Prepared by Robin Baley; sponsoring witness Robin Baley.

HEATH 1-6 WITHDRAWN BY AGREEMENT

HEATH 1-7. If Forney Lake contends that Heath's application for single certification requests authority to provide service to customers or areas currently receiving retail water service from Forney Lake, please provide the following information related that contention:

- a. Identity the language from Heath's application that supports this contention.
- b. Identify the customers or areas currently receiving retail water service from Forney Lake that you contend Heath's application will affect.
- c. Please produce all documents concerning or relating to that contention.

FLWSC has not made such a contention at this time.

Prepared by Robin Baley; sponsoring witness Robin Baley.

HEATH 1-8. **(Revised as Agreed)** Please admit that all of Forney Lake's water utility facilities currently used to provide retail water service to its customers before the grant of single certification as requested by Heath will continue to be used for that purpose provided the single certification requested is granted.

At this time, FLWSC can admit. However, FLWSC reserves the right to amend.

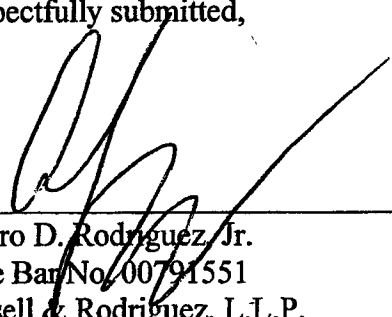
Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

HEATH 1-9 If Forney Lake does not admit to RFI 1-8, please identify the specific components of Forney Lake's facilities that will not be used to provide water utility service to Forney Lake's existing customers following the grant of the single certification as requested by Heath.

N/A

Prepared by \_\_\_\_\_; sponsoring witness \_\_\_\_\_.

Respectfully submitted,

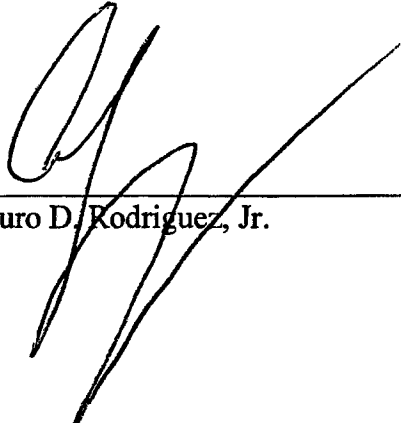


\_\_\_\_\_  
Arturo D. Rodriguez, Jr.  
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Russell & Rodriguez, L.L.P.  
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T: (512) 930 1317  
F: (866) 929-1641

ATTORNEY FOR FORNEY LAKE WATER  
SUPPLY CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of April, 2015, a true and correct copy of the foregoing document was served on all parties in accordance with PUC Procedural Rule 22.74.

  
\_\_\_\_\_  
Arturo D. Rodriguez, Jr.

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Attorney – Legal Division  
Public Utility Commission of Texas  
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Representing the Public Utility Commission of Texas

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Representing City of Heath

**PUC DOCKET NO. 44541**

**APPLICATION OF CITY OF HEATH  
TO AMEND A CERTIFICATE OF  
CONVENIENCE AND NECESSITY AND  
TO DECERTIFY A PORTION OF  
FORNEY LAKE WATER SUPPLY  
CORPORATION'S SERVICE AREA IN  
ROCKWALL COUNTY**

§  
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**PUBLIC UTILITY COMMISSION**  
**OF**  
**TEXAS**

**FORNEY LAKE WATER SUPPLY CORPORATION'S FIRST SUPPLEMENTAL  
RESPONSE TO CITY OF HEATH'S FIRST REQUEST FOR INFORMATION**

Comes now Forney Lake Water Supply Corporation ("FLWSC") and files its First Supplemental Response to the City of Heath's First Request for Information. All parties may treat the answers as if they were filed under oath.

FLWSC files these responses without agreeing to the relevancy of the information sought and without waiving its right to object at the time of hearing to the admissibility of the information provided herein.

**FLWSC'S RESPONSES:**

- HEATH 1-2. If any of Forney Lake's property may be rendered useless and valueless if single certification as requested by Heath in its application is granted, please identify each separate component of such property and provide the following information:
- a. The type or nature of the property (e.g. water lines, water storage facilities, pumps, valves, meters, vaults, easements, etc.).
  - b. The location or address of the property, and for water lines or easements the beginning and end point of the property that may be rendered useless or valueless.
  - c. A map depicting the location of the property in Forney Lake's system.
  - d. The size and capacity of the property.
  - e. The use of the property before single certification and the use of the property, if any, after single certification.

- f. The year in which the property was placed in service.
  - g. Forney Lake's original cost to acquire and install the property.
  - h. Financing used to acquire the property
  - i. Forney Lake's current book value for the property.
  - j. **(Revised as Agreed)** Please admit that Heath's application does not indicate any assets or facilities to be transferred to Heath.
- a. Portions of distribution waterlines, booster pumps, elevated storage tanks, ground storage tanks, transmission waterlines, electrical/SCADA, valves, fittings, appurtenances, and easements and emergency genset.
  - b. See map attached as Exhibit Heath RFI 1-2.
  - c. See map attached as Exhibit Heath RFI 1-2.
  - d. The size of the facilities are as indicated below:
    - 1.5", 2", 2.5", 4", 6", 8" 10" and 12" waterlines;
    - 100,000, 150,000, 200,000, and 2 ea. - 500,000 ground storage tanks;
    - 500,000 gallon elevated tank;
    - 3,000 GPM booster pump station;
    - 2 ea. - 1,500 GPM booster pumps and building;
    - 3 ea. - 1,500 GPM booster pumps and building;
    - 230 KW genset; and
    - 275 KW genset.
  - e. The property is currently being utilized to provide potable water service to the customers of FLWSC. A share of the facilities will no longer be utilized after single certification.

Responses a-e. Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

HEATH 1-3 Please produce all documents concerning or relating to Forney Lake's belief that its property may be rendered useless and valueless if single certification as requested by Heath if its application is granted.

See map provided as Exhibit Heath RFI 1-2 and documents contained in Exhibit Heath RFI 1-3.

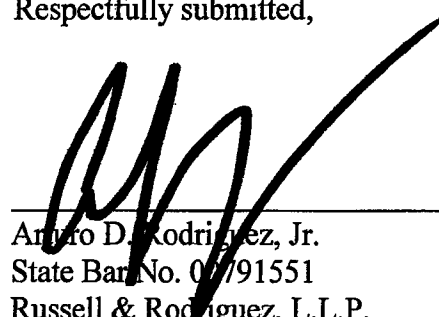
Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

HEATH 1-8. **(Revised as Agreed)** Please admit that all of Forney Lake's water utility facilities currently used to provide retail water service to its customers before the grant of single certification as requested by Heath will continue to be used for that purpose provided the single certification requested is granted.

At this time, FLWSC can admit, except for specific distribution lines located in the single certification area. FLWSC reserves the right to amend.

Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

Respectfully submitted,

  
\_\_\_\_\_  
Arturo D. Rodriguez, Jr.  
State Bar No. 07791551  
Russell & Rodriguez, L.L.P.  
1633 Williams Drive, Building 2, Suite 200  
Georgetown, Texas 78628  
T: (512) 930 1317  
F: (866) 929-1641

ATTORNEY FOR FORNEY LAKE WATER  
SUPPLY CORPORATION



**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of May, 2015, a true and correct copy of the foregoing document was served on all parties in accordance with PUC Procedural Rule 22.74.



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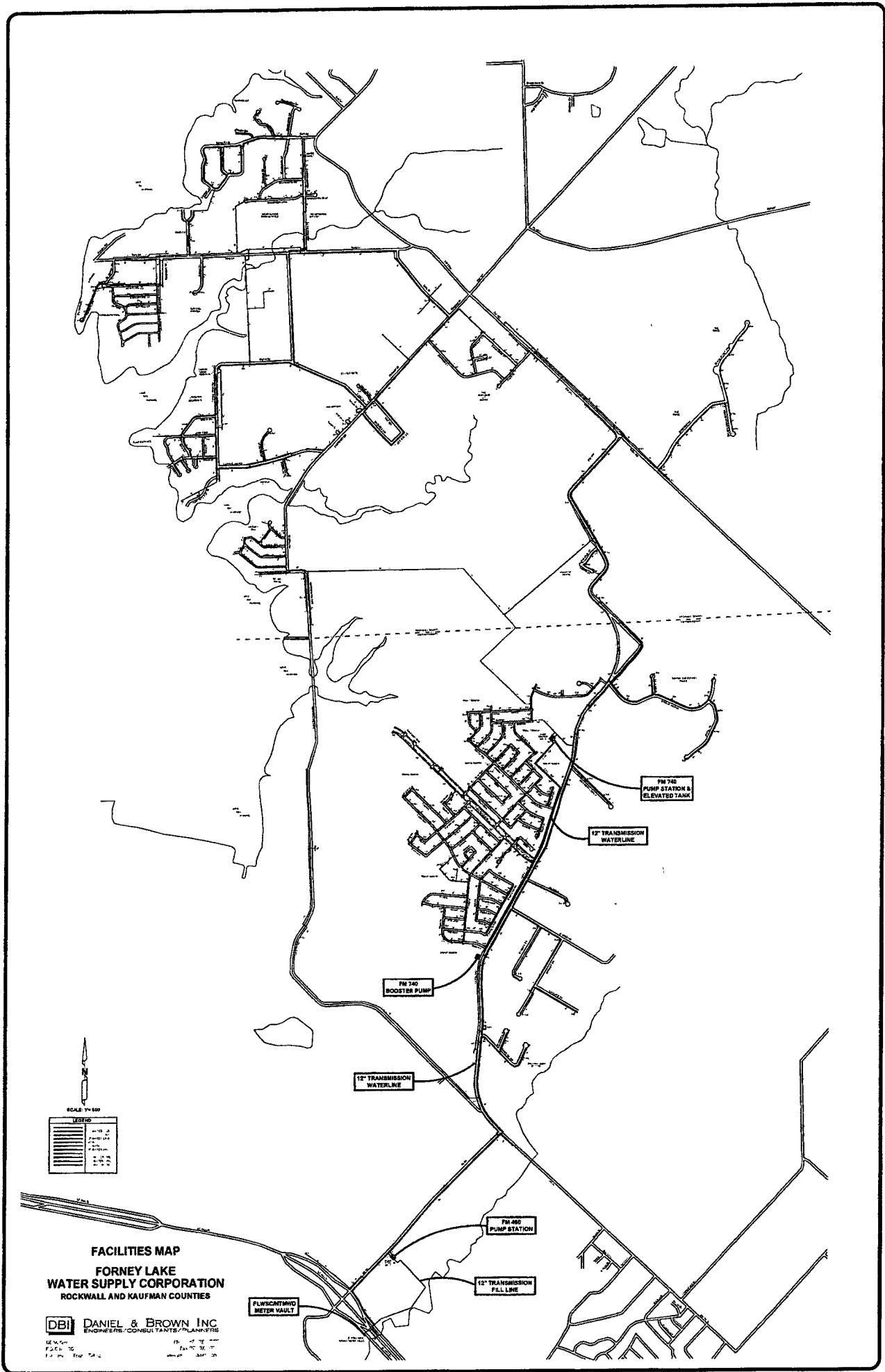
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Representing City of Heath

## **Exhibit Heath RFI 1-2**

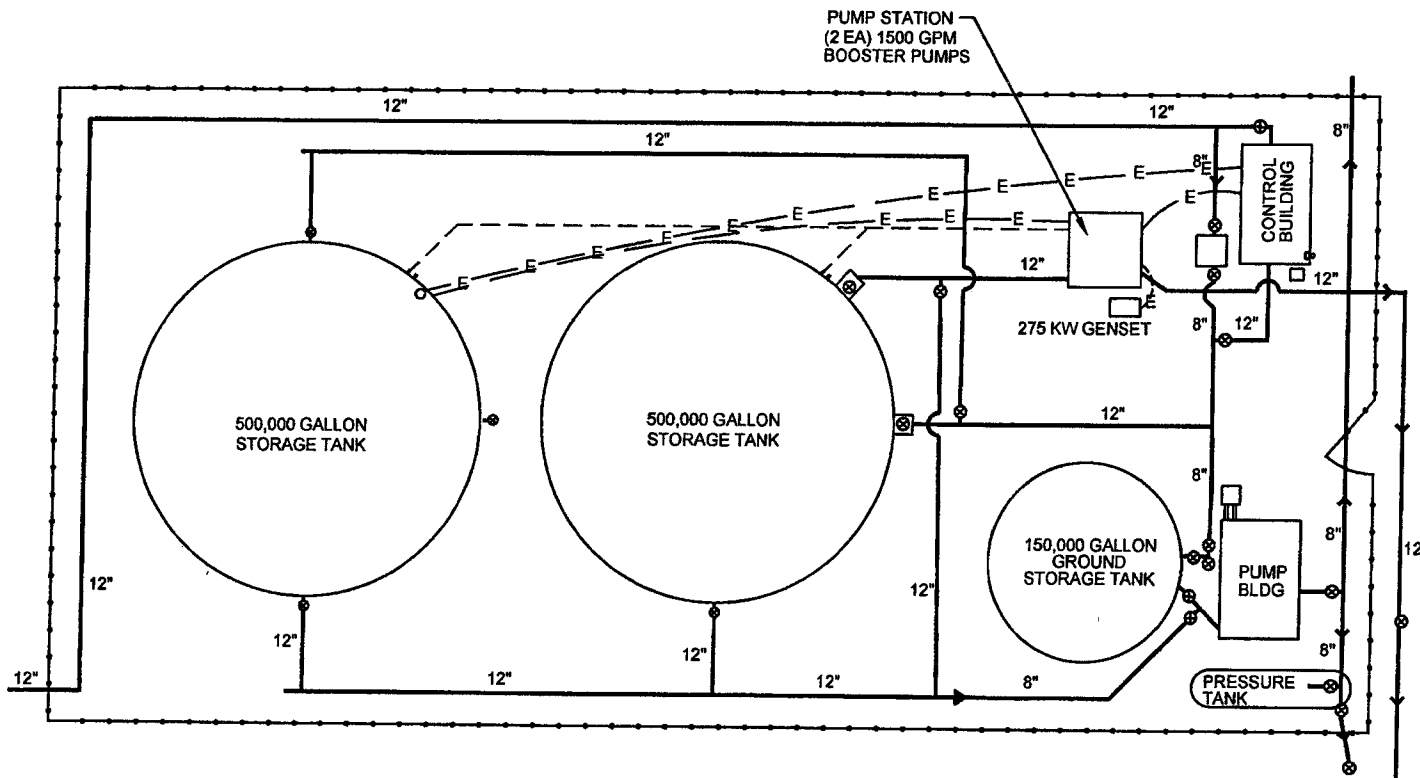


**FACILITIES MAP**  
**FORNEY LAKE**  
**WATER SUPPLY CORPORATION**  
**ROCKWALL AND KAUFMAN COUNTIES**

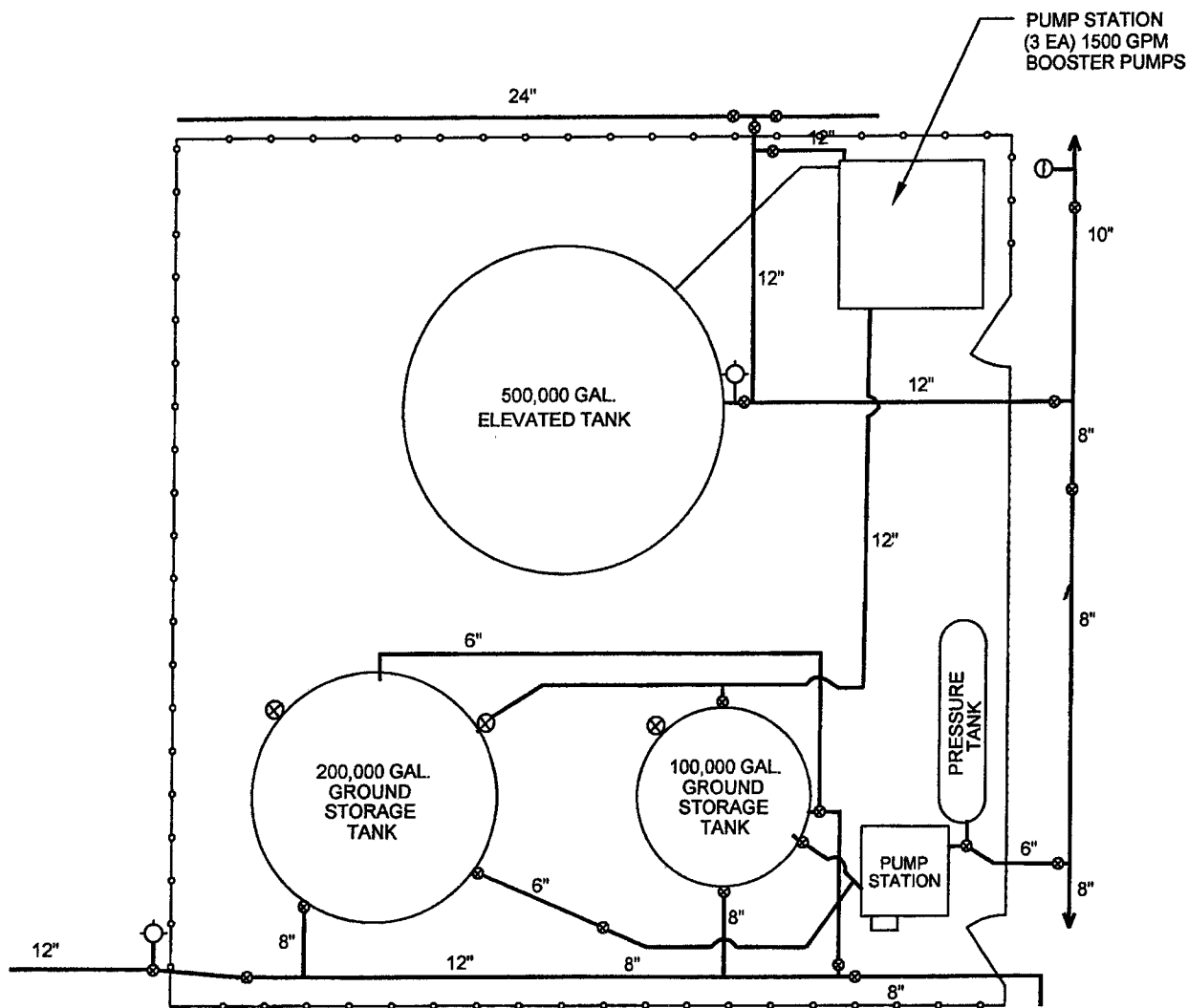
**DBI** DANIEL & BROWN INC.  
 ENGINEERS/CONSULTANTS/PLANNERS

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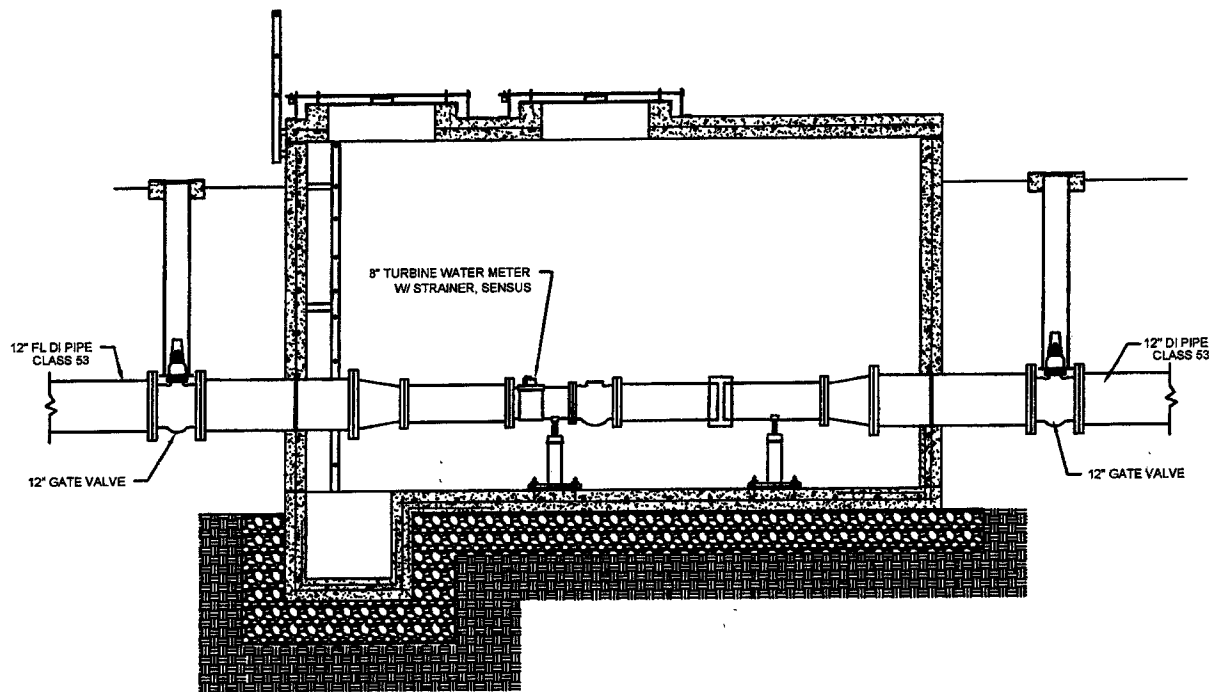
## **Exhibit Heath RFI 1-3**



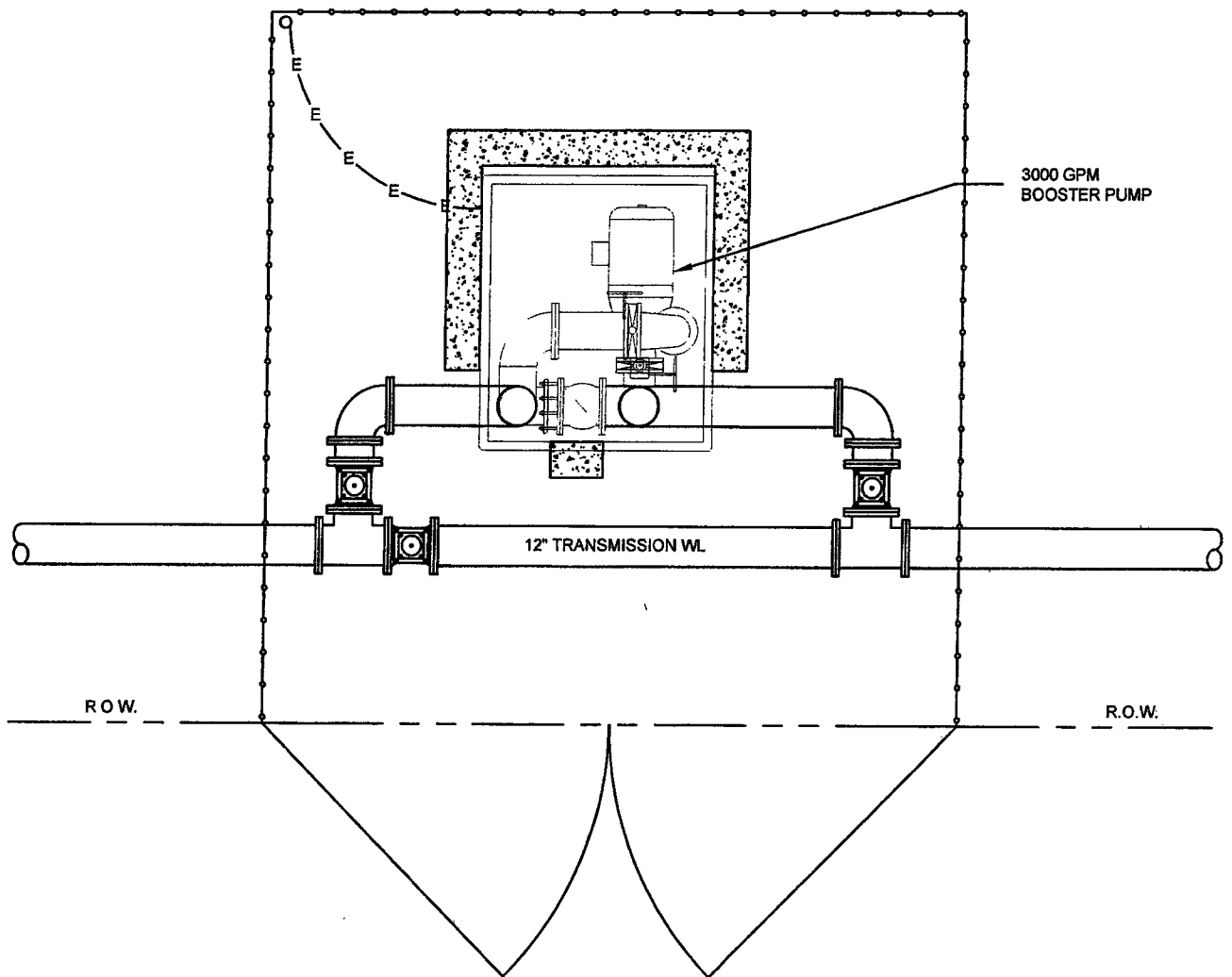
**FM 460 PUMP STATION SITE**  
**FORNEY LAKE WATER SUPPLY CORPORATION**  
**KAUFMAN & ROCKWALL COUNTIES, TEXAS**



**FM 740 PUMP STATION & ELEVATED TANK SITE**  
**FORNEY LAKE WATER SUPPLY CORPORATION**  
**KAUFMAN & ROCKWALL COUNTIES, TEXAS**



**FLWSC/NTMWD METER VAULT SITE**  
**FORNEY LAKE WATER SUPPLY CORPORATION**  
**KAUFMAN & ROCKWALL COUNTIES, TEXAS**



**FM 740 BOOSTER PUMP SITE**  
FORNEY LAKE WATER SUPPLY CORPORATION  
KAUFMAN & ROCKWALL COUNTIES, TEXAS



## **Attachment 2**

100

15:50:05 1 was not providing enough water without a booster pump,  
15:50:11 2 correct?

15:50:11 3 A. I don't know.

15:50:11 4 Q. Okay. Do you have any knowledge concerning  
15:50:28 5 the capacity of the Forney Lake system?

15:50:35 6 A. No.

15:50:35 7 Q. Do you have any knowledge concerning how the  
15:50:40 8 components of the Forney Lake system were sized?

15:50:42 9 A. No.

15:50:43 10 Q. Do you have any knowledge concerning when the  
15:50:48 11 various components of the Forney Lake system were  
15:50:51 12 installed?

15:50:52 13 A. No.

15:50:53 14 Q. Do you have any knowledge concerning the  
15:50:56 15 original cost of any of the Forney Lake systems?

15:50:59 16 A. No.

15:51:00 17 Q. Would anybody within Forney Lake or its other  
15:51:05 18 independent contractors have knowledge concerning those  
15:51:09 19 issues?

15:51:10 20 A. Yes.

15:51:10 21 Q. Who?

15:51:10 22 A. The auditor and engineer.

15:51:21 23 Q. Would they have studies with regard to --  
15:51:21 24 would the engineer have studies with regards to the  
15:51:29 25 capacity of the system?

101

15:51:29 1 A. I don't know.

15:51:30 2 Q. Do you think the system was built without any  
15:51:39 3 engineering studies?

15:51:40 4 A. I don't know.

15:51:41 5 Q. Have you made an inquiry?

15:51:45 6 A. No, I have not.

15:51:46 7 Q. So you've never asked the engineer whether he  
15:51:50 8 has any kind of studies of the system?

15:51:53 9 A. No, I have not.

15:51:54 10 Q. Okay. Even when you got the Open Records Act  
15:51:59 11 request asking for that?

15:52:01 12 A. No.

15:52:01 13 Q. Okay. Have you asked the auditor whether he  
15:52:11 14 has any information about original cost to install  
15:52:16 15 components of the system?

15:52:18 16 A. No.

15:52:18 17 Q. Have you ever asked the auditor if he has  
15:52:21 18 information concerning the depreciation applied to the  
15:52:21 19 components of the system?

15:52:26 20 A. No.

15:52:27 21 Q. Do you have any reason to believe that he  
15:52:29 22 would not have that information?

15:52:31 23 A. No.

15:52:31 24 Q. Even when Open Records Act request asks for  
15:52:37 25 all information, you didn't make an inquiry of him for

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15:55:15 1 MR. RODRIGUEZ: Yes. I have that as 16.

15:55:20 2 Not the supplement, right?

15:55:22 3 MR. MATHEWS: No, not the supplement.

15:55:25 4 MR. RODRIGUEZ: 16.

15:56:01 5 Q. (By Mr. Mathews) So let's take a look at  
15:56:04 6 Heath 1-1. It has to do with an inspection of any  
15:56:11 7 property that may be rendered useless and valueless if  
15:56:11 8 single certifications as requested, and you answered the  
15:56:18 9 question by saying that counsel for Forney Lake will  
15:56:22 10 work with Heath to coordinate a mutually agreeable time  
15:56:22 11 for inspection.

15:56:27 12 Will you be involved in that inspection?

15:56:27 13 A. No.

15:56:28 14 Q. Who will be?

15:56:29 15 A. Alan Smirl.

15:56:30 16 Q. Okay. The next answer is on the second page  
15:56:30 17 Response J by Robin Bailey. Heath's application does not  
15:56:30 18 appear to indicate any assets or facilities to be  
15:56:30 19 transferred to Heath.

15:56:53 20 Is that your testimony?

15:56:56 21 A. Yes.

15:57:03 22 Q. Okay. On the next page, Item 1-4, please  
15:57:12 23 provide all master plan or other planning or engineering  
15:57:12 24 reports describing Forney Lake's water supply system  
15:57:20 25 used to supply retail water service within the corporate

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15:57:20 1 limits of Heath.

15:57:21 2 And your answer is none; is that correct?

15:57:24 3 A. Yes.

15:57:24 4 Q. But you didn't make an inquiry of the engineer  
15:57:28 5 in answering this question?

15:57:30 6 A. No.

15:57:39 7 Q. So you don't know whether such studies exist  
15:57:43 8 or not?

15:57:44 9 A. No.

15:58:41 10 Q. I see you answered Heath 1-7, and it asks if  
15:58:48 11 Forney Lake contends that Heath's requests authority to  
15:58:48 12 provide service to customers or areas currently  
15:58:55 13 receiving service from Forney Lake, please provide  
15:58:56 14 certain information.

15:58:57 15 And your answer is Forney Lake has not made  
15:59:00 16 such contention, correct?

15:59:02 17 A. Yes.

15:59:14 18 Q. Okay. Are you aware of the growth that occurs  
15:59:45 19 on the Forney Lake system?

15:59:50 20 MR. RODRIGUEZ: Objection, form.

15:59:55 21 Q. (By Mr. Mathews) Let me ask it this way. At  
15:59:58 22 Board meetings, are there discussions about the addition  
16:00:02 23 of new customers to the system?

16:00:04 24 A. Yes.

16:00:05 25 Q. Could you tell me the approximate growth rate