



Control Number: 44541



Item Number: 53

Addendum StartPage: 0

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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OF TEXAS

**CITY OF HEATH'S RESPONSE TO FORNEY LAKE WATER SUPPLY
CORPORATION'S MOTION TO EXTEND TIME TO RESPOND TO RFIs, AND
HEATH'S MOTION FOR SANCTIONS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Now comes the City of Heath ("Heath") and files this Response to Forney Lake Water Supply Corporation's ("Forney Lake's") Motion to Extend Time to Respond to RFIs, and Heath's Motion for Sanctions and in support thereof would show the following:

I. PROCEDURAL HISTORY/BACKGROUND

The procedural history and background relevant to both Heath's response to Forney Lake's motion to extend and Heath's motion for sanctions are summarized below:

- March 16, 2015** Heath filed its application under Tex. Water Code §13.255 seeking single certification to serve new customers in Forney Lake's certificated service area and Heath's corporate limits.¹
- April 8, 2015** PUC staff filed its response to Order No.1 asserting, among other things, that Heath's application was deficient because it did not indicate whether Heath expects any of Forney Lake's property to be *rendered useless or valueless*.²
- April 10, 2015** Order No. 2 is entered requiring Heath to address the deficiencies identified in PUC staff's April 8, 2015 filing³
- April 10, 2015** Heath filed its First Requests for Information to Forney Lake (Exhibit 1).⁴ Among other things, Heath asked Forney Lake to admit that all of its facilities currently used to provide retail water service to its customers will continue to

¹ See PUC docket 44541, Interchange Item 1.

² See PUC docket 44541, Interchange Item 7.

³ See PUC docket 44541, Interchange Item 9.

⁴ See PUC docket 44541, Interchange Item 10.

be used for that purpose if Heath's application for single certification is granted⁵. Heath also requested "If any of Forney Lake's *property* may be *rendered useless or valueless* if single certification as requested by Heath in its application is granted please *identify* each separate component of *such property*..."⁶

April 30, 2015

Forney Lake filed its response to Heath's First RFI (Exhibit 2).⁷ Forney Lake admitted that all of its property currently used to provide service to its customers will continue to be used for that purpose if Heath's application for single certification is granted.⁸ Forney Lake also stated that it was gathering information to respond to the RFI asking it to identify its property that may be rendered useless or valueless if Heath single certification request is granted.⁹

May 4, 2015

Heath filed its response to Order No. 2.¹⁰ Heath noted that Forney Lake's admission that all of its property currently used to provide retail water service will continue to be used for that purpose if Heath's application is granted confirms Heath's expectation that none of Forney Lake's facilities will be rendered useless or valueless because Forney Lake will retain all of its existing facilities and continue to use them to serve all of its existing customers.

May 8, 2015

Forney Lake filed its first supplemental response to Heath's First RFIs (Exhibit 3).¹¹ Forney Lake described the property that may be rendered useless or valueless as unspecified "portions" of various system components and an unspecified "share of its facilities".¹² Forney Lake also provided a map of its entire system, but the map failed to identify the portion or share that Forney Lake contended would be rendered useless or valueless. Forney Lake provided no response to RFIs 1-2 (f)-(i) which sought detailed information regarding the property it contends will be rendered useless or valueless, such as in-service date, cost to acquire or install, method of financing, and current book value.

July 20, 2015

Heath filed its motion to compel (Exhibit 4).¹³ Heath asserted that Forney Lake had failed to answer several RFI's and had filed non-responsive answers to others that were relevant to the issue of whether any of Forney Lake's property will be rendered useless or valueless, and, if so, the compensation that would be just and reasonable for such property. Heath asked, among other things, that Forney Lake be compelled to describe and quantify the share of its

⁵ RFI 1-8.

⁶ RFI 1-2.

⁷ See PUC docket 44541, Interchange Item 23.

⁸ RFI 1-8.

⁹ RFI 1-2.

¹⁰ See PUC docket 44541, Interchange Item 18.

¹¹ See PUC docket 44541, Interchange Item 24.

¹² RFI 1-2

¹³ See PUC docket 44541, Interchange Item 33.

facilities it contends will no longer be utilized to provide retail water service after single certification.

July 27, 2015 Forney Lake filed its response to Heath's Motion to Compel.¹⁴ Forney Lake stated that for the unanswered RFIs it would "strive to provide the requested information within 15 business days".

Sept. 11, 2015 Order No 5 ruling on Heath's motion to compel is issued (Exhibit 5).¹⁵ Order No. 5 requires Forney Lake to "respond to all unanswered RFI's and complete or clarify all unresponsive answers" by September 18. It specifically required Forney Lake ***"to provide a map of sufficient scale and detail that it can be used to identify facilities and properties that Forney Lake contends would be rendered useless or valueless"***. It also specifically required Forney Lake to "respond completely to RFIs 1-2 (f)-(i)" which sought information concerning when the property it contends will be rendered useless or valueless was placed in service, costs to acquire or install, method of financing, and current book value.

Sept. 18, 2015 Forney Lake filed its second supplemental response to Heath's First RFI (Exhibit 6).¹⁶ Forney Lake's response did not clarify the portion or share of its facilities or property it contended would be useless or valueless. It provided a larger scale version of the same map of its entire system that was provided with its first supplemental response, but that **map does not identify the "portion" or "share" of Forney Lake's property its contends will be rendered useless or valueless**. Forney Lake's response to RFIs 1-2 (f)-(i) were incomplete and unresponsive.

Sept. 23, 2015 Heath filed its Second Request for Information to Forney Lake (Exhibit 7).

No objections to Heath's second RFIs were filed within ten days as authorized by Order No. 1. Responses to Heath's RFIs were due on October 13, 2015. No responses were filed. Instead, on October 13, 2015 Forney Lake filed its motion to extend time to respond to Heath's RFIs. Pursuant to Order No. 1 in this case and PUC Procedural Rule §22.78(a), Heath may file a response to Forney Lake's Motion within five days following receipt. Accordingly, this response is timely filed.

II. FORNEY LAKE's MOTION TO EXTEND TIME SHOULD BE DENIED

A. Forney Lake's Motion Fails to Show Good Cause.

In order to support its request for an extension of the twenty-day time period to provide a full written response to Heath's requests for information, Forney Lake is required to establish

¹⁴ See PUC docket 44541, Interchange Item 34.

¹⁵ See PUC docket 44541, Interchange Item 40.

¹⁶ See PUC docket 44541, Interchange Item 42.

“good cause.”¹⁷ It has failed to do so. Forney Lake’s motion to extend alleges that it must rely on the expertise of its consulting engineer to respond to unspecified engineering questions and implies that the same circumstances exist with regard to its accounting consultant for unspecified RFIs related to accounting issues. Forney Lake alleges its engineer “is out of the country and will not return until October 16” and that it “has not received the required information from its accounting/auditing services”. Forney Lake makes no effort to allege, much less prove, that it diligently used the twenty day period since Heath’s RFIs were received to develop complete responses. It does not show that it timely submitted the RFI’s to its consultants, that they were unavailable throughout the twenty day period or that other members of their practice would be unable to assist Forney Lake in responding to Heath’s requests. At best, Forney Lake has alleged that its engineer is out of the country, as of the date of the motion, and that it has not received unspecified information from its accountant. These meager allegations, even if supported with affidavits as required by PUC rules, would not be sufficient to show good cause to grant Forney Lake’s motion seeking an additional twenty days to respond because they do not show diligence throughout the twenty day response period.

Forney Lake also made no effort to identify the specific RFIs for which it needs the services of its engineer and accountant. Forney Lake did not need the assistance of its engineer or accountant to respond to the following RFIs, which clearly are within the knowledge and control of Forney Lake itself:

Heath 2-11 Rate of customer growth on the Forney Lake system.

Heath 2-12 Anticipated rate of customer growth on the Forney Lake system.

Heath 2-14 Whether Forney Lake is obligated by contract or otherwise to provide fire flows to the Travis Ranch subdivision.

Heath 2-15 Request to provide all contracts or other agreements relating to Forney Lake’s obligation to provide retail water service to the Travis Ranch subdivision.

Heath 2-24 Request to provide copies of Forney Lakes Form 990 filed with IRS for tax years 2012-2014.

¹⁷ PUC Proc. R. 22.144(c)(1).

B. Forney Lake's Motion Fails to Comply With PUC Procedural Rule 22.77(a)

Commission rules impose a clear and unambiguous requirement that a motion that is based upon alleged facts that are not a matter of record "shall be supported by affidavit".¹⁸ Forney Lake's motion to extend time is based on alleged facts concerning its engineer and accountant that are not a matter of record. Because Forney Lake failed to comply with this straightforward requirement of PUC's procedural rule its motion cannot be granted.

III. MOTION FOR SANCTIONS

Texas Water Code §13.255 (c) provides:

The utility commission shall grant single certification to the municipality. The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for *such* property.

The first sentence of the statute reflects a clear legislative preference to allow a city that desires to provide water utility service within its corporate limits the ability to do so. The second sentence indicates that **the threshold issue to be decided in such case is whether the granting of the single certification as requested by the city will render property of retail public utility useless or valueless.** If the utility commission makes this threshold determination, it is then required to determine just and adequate compensation for *such* property. The identification of the specific property that will be rendered useless or valueless, if any, is of critical importance because it will determine not only appropriate compensation, if any, but also will identify the property for which title will be transferred, by a district court order, to the city paying compensation at the conclusion of the 13.255 process.¹⁹

Because Forney Lake is the only entity with knowledge of whether or how single certification as requested in the application is likely to affect its property, Heath sought this information through discovery on Forney Lake. The record of this case makes clear the timely and diligent efforts of Heath to identify property that Forney Lake contends may be rendered useless or valueless and Forney Lake's resistance to disclosure of this information. Heath's First

¹⁸ PUC Procedural Rule 22.77(a).

¹⁹ See Tex. Water Code §13.255(d)(1).

RFIs to Forney Lake seeking this information were filed on April 10, 2015, more than six months prior to this motion. Forney Lake's efforts over the last six months to delay and confuse constitute both an abuse of discovery and the failure to obey a prior order of an Administrative Law Judge that should be ended with an order granting sanctions as authorized by PUC Procedural Rule §22.161.

As noted in the Procedural History/Background, Heath's First RFI to Forney Lake on April 10, 2015, asked Forney Lake to identify "property that may be rendered useless or valueless" if single certification as requested by Heath is granted. Forney Lake's April 30, 2015 initial response provided no responsive information to this request, instead stating that Forney Lake was "**gathering this information**". Forney Lake's first supplemental response filed May 8 asserted that unspecified "**portions**" of various system components and an unspecified "**share of its facilities**" would be rendered useless or valueless. This response wholly failed to address RFIs seeking information about the specific identity and valuation of such property. Because this vague and unspecific response was wholly inadequate to identify property of Forney Lake that would be rendered useless or valueless as a result of single certification or appropriate compensation for such property, Heath filed its motion to compel asking, among other things, that Forney Lake be compelled to "describe and quantify" the share its facilities it contends would be rendered useless or valueless.

Forney Lake's July 27 Response to Heath's Motion to Compel represented that it would "strive to provide the requested information within 15 days".²⁰ However, no additional information was provided, and on September 11 Order No. 5 was issued.²¹ It noted that "several months had passed since Heath's RFI's were served on Forney Lake" and that "full and complete responses by Forney Lake are required". It ordered Forney Lake to "respond to all unanswered RFI's and complete or clarify all unresponsive answers". It specifically required Forney Lake to provide a map "of sufficient scale and detail that it can be used to identify facilities and properties that Forney Lake contends would be rendered useless or valueless". Forney Lake's Second Supplemental Response²² filed September 18, 2015 in response to Order No. 5 repeated its vague and non-specific assertion that "portions of its facilities" would be rendered useless or

²⁰ See PUC docket 44541, Interchange Item 34.

²¹ See Exhibit 5 and PUC docket 44541, Interchange Item 40.

²² See PUC docket 44541, Interchange Item 42.

valueless, but did nothing to describe, quantify or otherwise clarify those “portions”. Without the specific identification of the property claimed to be rendered useless or valueless it will be impossible to assess the validity of the claim, to determine, if necessary, just and adequate compensation, and to identify in the commission’s final order the property determined to be rendered useless or valueless for which title will be transferred. Forney Lake also represented in its Second Supplemental Response that additional responsive information was still being “investigated.”²³ To date, after more than six months since the RFIs were served, Forney Lake has not further supplemented its response to these requests.

Going the extra mile, Heath once again sought clarification concerning the property that Forney Lake contends will be rendered useless or valueless, if any, and information concerning the value of such property through its Second RFI to Forney Lake. Now, Forney Lake again stalls and resists meaningful discovery by filing its meritless Motion to Extend Time. Because of its continuing abuse of the discovery process and its failure to obey Order No. 5, Forney Lake should be sanctioned as authorized by PUC Procedural Rule §22.161.

The Commission’s rules provide a range of sanctions that an ALJ is authorized to impose, if appropriate and justified.²⁴ These include holding that designated facts be deemed admitted, or refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters into evidence.

Heath asserts that the ALJ should sanction Forney Lake for abusing the discovery process in resisting discovery relating to whether any of its property will be rendered useless or valueless if single certification is granted, if any, and for failing to obey the Commission ALJ’s order directing Forney Lake to respond to Heath’s RFIs. Heath further asserts that the appropriate sanction would be for the ALJ to enter an order finding that none of Forney Lake’s property will be rendered useless or valueless as a result of single certification as requested by Heath and prohibiting Forney Lake from offering any evidence or appraisal to the contrary. The threshold issue in this matter is whether any of Forney Lake’s property will be rendered useless or valueless. Forney Lake has managed to drag this matter on for more than six months by refusing

²³ Forney Lake’s Second Supplemental Response to Heath 1-2.g & i.


²⁴ PUC Proc. R. 22.161(c).

to provide any substantive contentions or facts to support its opposition to Heath's contention that no property will be rendered useless or valueless. It is time for this issue to be resolved.

IV. PRAYER

For the reasons set forth in this response and motion Heath requests an order that denies Forney Lake's Motion to Extend Time to Respond to RFIs and that grants a sanction finding that none of Forney Lake's property will be rendered useless or valueless as a result of single certification as requested by Heath and prohibiting Forney Lake from offering any evidence or appraisal to the contrary.

Respectively submitted,


Jim Mathews
State Bar No. 15188700
Mathews & Freeland, LLP
8140 N. Mopac Expy, Ste 2-260
Austin, Texas 78759
Telephone (512) 404-7800
Facsimile (512) 703-2785

Attorneys for the City of Heath

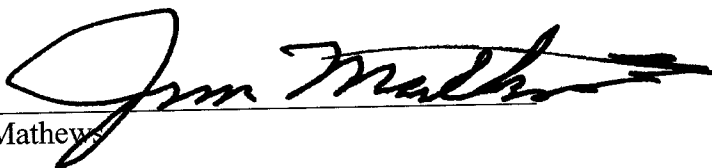
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the City of Heath's Response to Forney Lake's Motion to Extend Time to Respond to RFIs was served on all parties of record in this proceeding on this 20th day of October, 2015, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

Arturo Rodriguez, Jr.
Attorney for FLWSC
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

List of Exhibits

- Exhibit 1: Heath's 1st RFI to Forney Lake Water Supply Corporation
- Exhibit 2: Forney Lake's Response to Heath's 1st RFI
- Exhibit 3: Forney Lake's 1st Supplementary Response to Heath's 1st RFI
- Exhibit 4: Heath's Motion to Compel
- Exhibit 5: Order No. 5
- Exhibit 6: Forney Lake's 2nd Supplemental Response to Heath's 1st RFI
- Exhibit 7: Heath's 2nd RFI to Forney Lake

Exhibit 1

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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**CITY OF HEATH'S FIRST
REQUEST FOR INFORMATION TO FORNEY LAKE WSC**

TO: Forney Lake Water Supply Corporation by and through its attorney of record, Arturo Rodriguez, Jr., Russell & Rodriguez LLP, 1633 Williams Dr., Building 2, Suite 200, Georgetown, Texas 78628.

Pursuant to P.U.C. PROC. R. 22.144, the City of Heath ("Heath") propounds its First Request for Information (Exhibit A) to Forney Lake Water Supply Corporation ("Forney Lake").

Pursuant to Order No. 1, Responses should be provided within ten (10) days to:

Jim Mathews
Mathews & Freeland, LLP
8140 N. MoPac Expy Ste. 2-260
Austin, Texas 78759
(512) 404-7800
jmathews@mandf.com

DEFINITIONS AND INSTRUCTIONS

- A. Pursuant to P.U.C. PROC. R. 22.144(c)(2)(F), Heath requests that answers to the requests for information be made under oath. Each answer should identify the person responsible for preparing that answer (other than the purely clerical aspects of its preparation) and the name of the witness in this proceeding who will sponsor the answer and who can vouch for its accuracy.
- B. In producing documents pursuant to this request for information, please indicate the specific request(s) to which the document is being produced.
- C. These requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer supplied by you, such changed answer should be submitted as a supplement to your original answer pursuant to P.U.C. PROC. R. 22.144(i).

- D. Please answer each request and sub-request in the order in which they are listed and in sufficient detail to provide a complete and accurate answer to the request.
- E. Heath requests that each item of information be made available as it is completed, rather than upon compilation of all information requested.
- F. "Forney Lake" refers to Forney Lake Water Supply Corporation, its parent, subsidiaries and affiliates, past or present; its employees, officers, directors, agents, consultants, attorneys, and all persons acting under contractual arrangements with or acting or purporting to act on behalf of Forney Lake; any merged or consolidated predecessors or predecessor in interest; and any merged or consolidated successors in interest.
- G. The terms "document" or "documents" are used in their broadest sense to include, by way of illustration and not limitation, all written or graphic matter of every kind and description whether printed, stored, produced or reproduced by any process whether visually, magnetically, mechanically, electronically or by hand, whether final or draft or deleted, original or reproduction, whether or not claimed to be privileged or otherwise excludable from discovery, and whether or not in your actual or constructive possession, custody, or control. The terms include, but are not limited to, writings, correspondence, telegrams, memoranda, studies, reports, surveys, statistical compilations, diagrams, schematic and other drawings, engineering plans and drawings, maps, studies, notes, calendars, tapes, computer disks, data on computer drives, existing and deleted e-mail, electronic recordings, tape recordings, cards, records, contracts, agreements, easements, invoices, licenses, diaries, journals, accounts, ledgers, pamphlets, books, publications, microfilm, microfiche, photographs, video recordings, and any other data compilations from which information can be obtained and translated, by you if necessary, into reasonably usable form. "Document" or "documents" shall also include every copy of a document where the copy contains any commentary or notation of any kind that does not appear on the original or any other copy.
- H. Pursuant to Tex. R. Civ. P. 196.4, Heath specifically requests that any electronic or magnetic data (which is included in the definition of "document") that is responsive to a request herein be produced on CD-Rom in a format that is compatible with Microsoft and be produced with your response to these requests.
- I. The terms "and" and "or" shall be construed both disjunctively and conjunctively as necessary to make the request inclusive rather than exclusive.
- J. "Each" shall be construed to include the word "every" and "every" shall be construed to include the word "each."
- K. "Any" shall be construed to include "all" and "all" shall be construed to include "any."
- L. The term "concerning," or one of its inflections, includes the following meanings: relating to; referring to; pertaining to; regarding; discussing; mentioning; containing; reflecting; evidencing; describing; showing; identifying; providing; disproving; consisting of; supporting; contradicting; in any way legally, logically or factually

connected with the matter to which the term refers; or having a tendency to prove or disprove the matter to which the term refers.

- M. The term "including," or one of its inflections, means and refers to "including but not limited to."
- N. "Relating to," "regarding," "concerning" and similar terms mean addressing, analyzing, referring, discussing, mentioning in any way, explaining, supporting, describing, forming the basis for, or being logically or causally connected in any way with the subject of these discovery requests.
- O. "Explain the basis" means provide all information on or describe every fact, statistic, inference, estimate, consideration, conclusion, study, and analysis known to Forney Lake that was relied upon in support of the expressed contention, proposition, conclusion or statement.
- P. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.
- Q. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.
- R. Pursuant to P.U.C. PROC. R. 22.144(h)(4), if the response to any request is voluminous, please provide a detailed index of the voluminous material.
- S. If the information requested is included in previously furnished exhibits, workpapers, responses to other discovery inquiries or otherwise, in hard copy or electronic format, please furnish specific references thereto, including Bates Stamp page citations and detailed cross-references.
- T. If a data response is available in EXCEL format, provide the EXCEL version of the data response.
- U. If any document is withheld under any claim of privilege, please furnish a privilege log identifying each document for which a privilege is claimed, together with the following information: date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; subject matter of the document; and explain the basis upon which the privilege is claimed.
- V. Words and phrases used in this request that also are used in the PUC Chapter 24 Rules shall have the same meaning as given to those words and phrases in those rules.

Respectfully submitted,



Jim Mathews
State Bar No. 13188700

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Austin, Texas 78759
Telephone (512) 404-7800
Facsimile (512) 703-2785

ATTORNEYS FOR CITY OF HEATH

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on April 10, 2015, by hand-delivery, facsimile, electronic mail, and/or First Class, U.S. Mail.

Arturo Rodriguez, Jr.
Attorney for FLWSC
Russell & Rodriguez LLP
1633 Williams Dr., Building 2, Suite 200
Georgetown, Texas 78632

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



Jim Mathews

PUC DOCKET NO. 44541

**EXHIBIT A
HEATH'S FIRST REQUEST
FOR INFORMATION TO FORNEY LAKE WSC**

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 _____.

Prepared by _____; sponsoring witness _____.

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. State whether Heath has requested through its application for single certification that the property be conveyed or transferred to Heath.

Prepared by _____; sponsoring witness _____.

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.

Prepared by _____; sponsoring witness _____.

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.

Prepared by _____; sponsoring witness _____.

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

Prepared by _____; sponsoring witness _____.

HEATH 1-6. Please admit that Heath's application for single certification seeks authority to provide service solely to serve new customers not currently receiving service in specified tracts of land within Heath's corporate limits.

Prepared by _____; sponsoring witness _____.

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. Identify 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.

Prepared by _____; sponsoring witness _____.

HEATH 1-8. 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 after the single certification requested is granted.

Prepared by _____; sponsoring witness _____.

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.

Prepared by _____; sponsoring witness _____.

PUC DOCKET NO. 44541

**EXHIBIT A
HEATH'S FIRST REQUEST
FOR INFORMATION TO FORNEY LAKE WSC**

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 _____.
- b. Prepared by _____; sponsoring witness _____.

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. State whether Heath has requested through its application for single certification that the property be conveyed or transferred to Heath.

Prepared by _____; sponsoring witness _____.

- 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.

Prepared by _____; sponsoring witness _____.

- 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.

Prepared by _____; sponsoring witness _____.

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

Prepared by _____; sponsoring witness _____.

- HEATH 1-6. Please admit that Heath's application for single certification seeks authority to provide service solely to serve new customers not currently receiving service in specified tracts of land within Heath's corporate limits.

Prepared by _____; sponsoring witness _____.

- 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. Identify 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.

Prepared by _____; sponsoring witness _____.

HEATH 1-8. 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 after the single certification requested is granted.

Prepared by _____; sponsoring witness _____.

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.

Prepared by _____; sponsoring witness _____.

Exhibit 2

PUC DOCKET NO. 44541

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

**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. Identify 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.

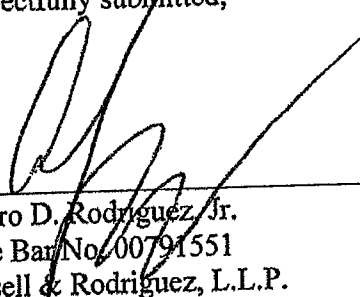
Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

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,

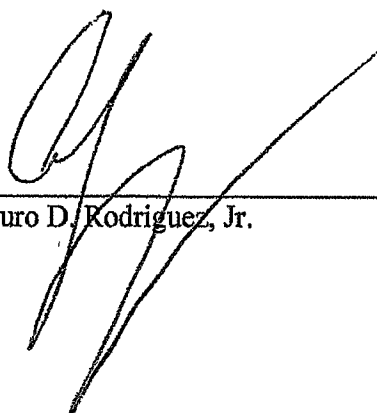


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Georgetown, Texas 78628
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F: (866) 929-1641

ATTORNEY FOR FORNEY LAKE WATER
SUPPLY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on the 30th 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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Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
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Facsimile: (512) 936-7268
Representing the Public Utility Commission of Texas

Jim Mathews
Mathews and Freeland
P.O. Box 1568
Austin, Texas 78768-1568
Telephone: (512) 404-7800
Facsimile: (512) 703-2785
Representing City of Heath

Exhibit 3

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
FILED
JUL 15 2015
CLERK
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.

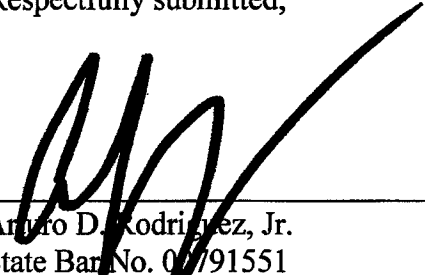
Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

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 water lines located in the single certification area. FLWSC reserves the right to amend.

Prepared by Eddy Daniel; sponsoring witness Eddy Daniel

Respectfully submitted,

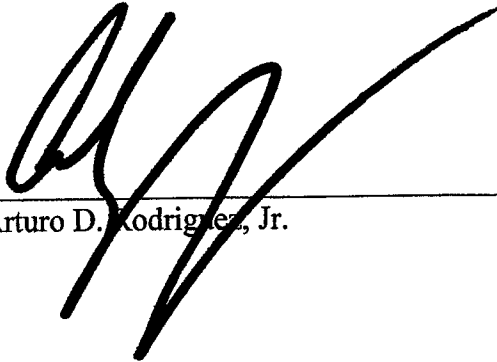


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ATTORNEY FOR FORNEY LAKE WATER
SUPPLY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on the 8th 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.



Arturo D. Rodriguez, Jr.

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Public Utility Commission of Texas
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Jim Mathews
Mathews and Freeland

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Austin, Texas 78701
Telephone: (512) 404-7800
Facsimile: (512) 703-2785
Representing City of Heath

Exhibit Heath RFI 1-2

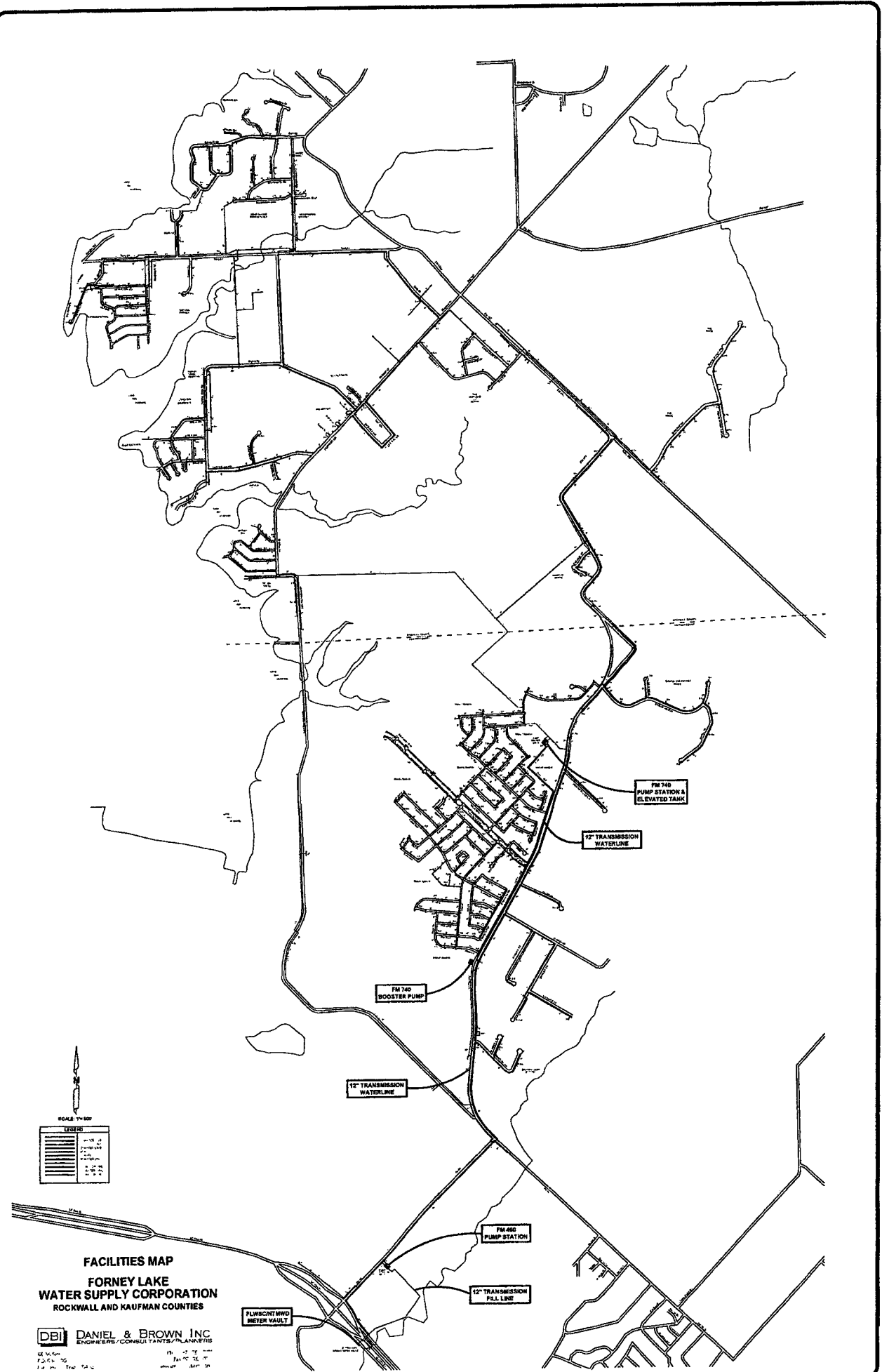
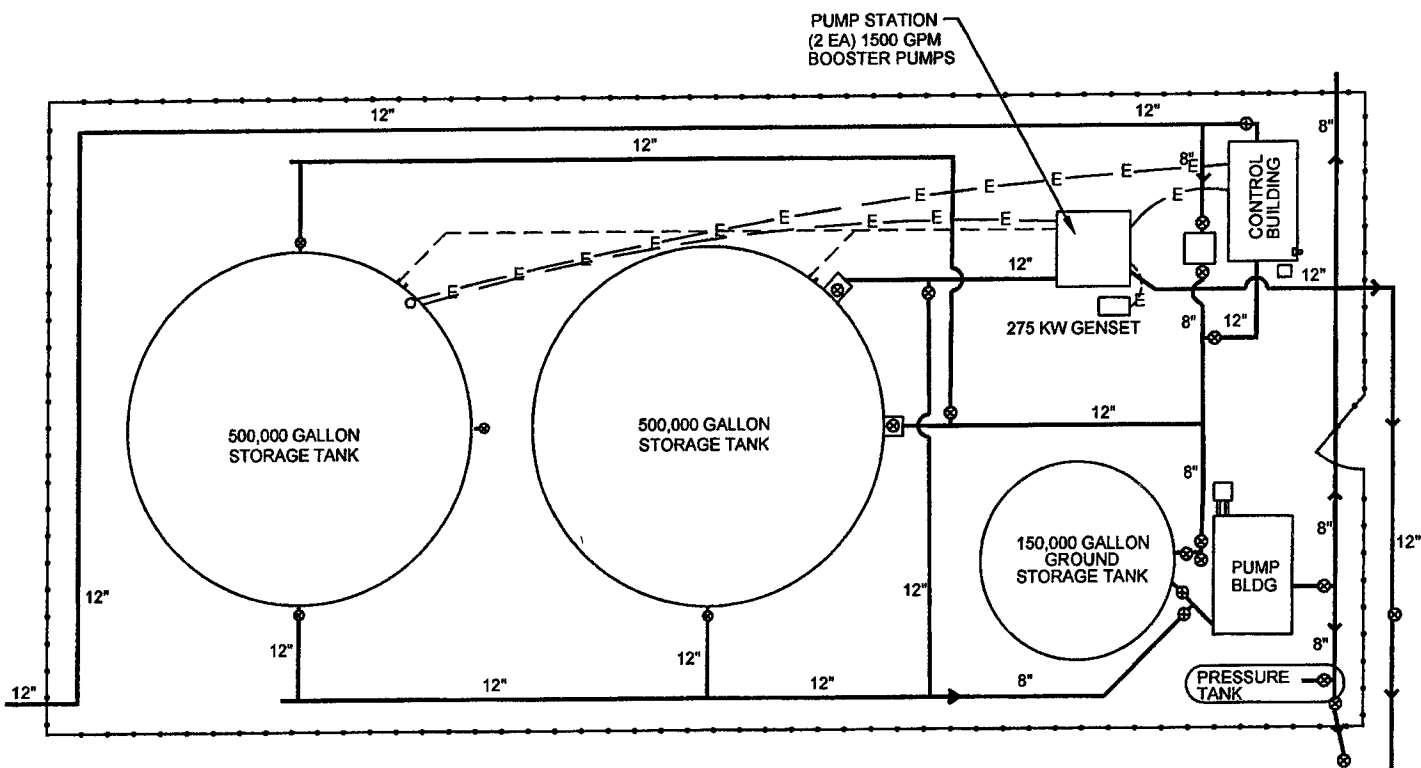
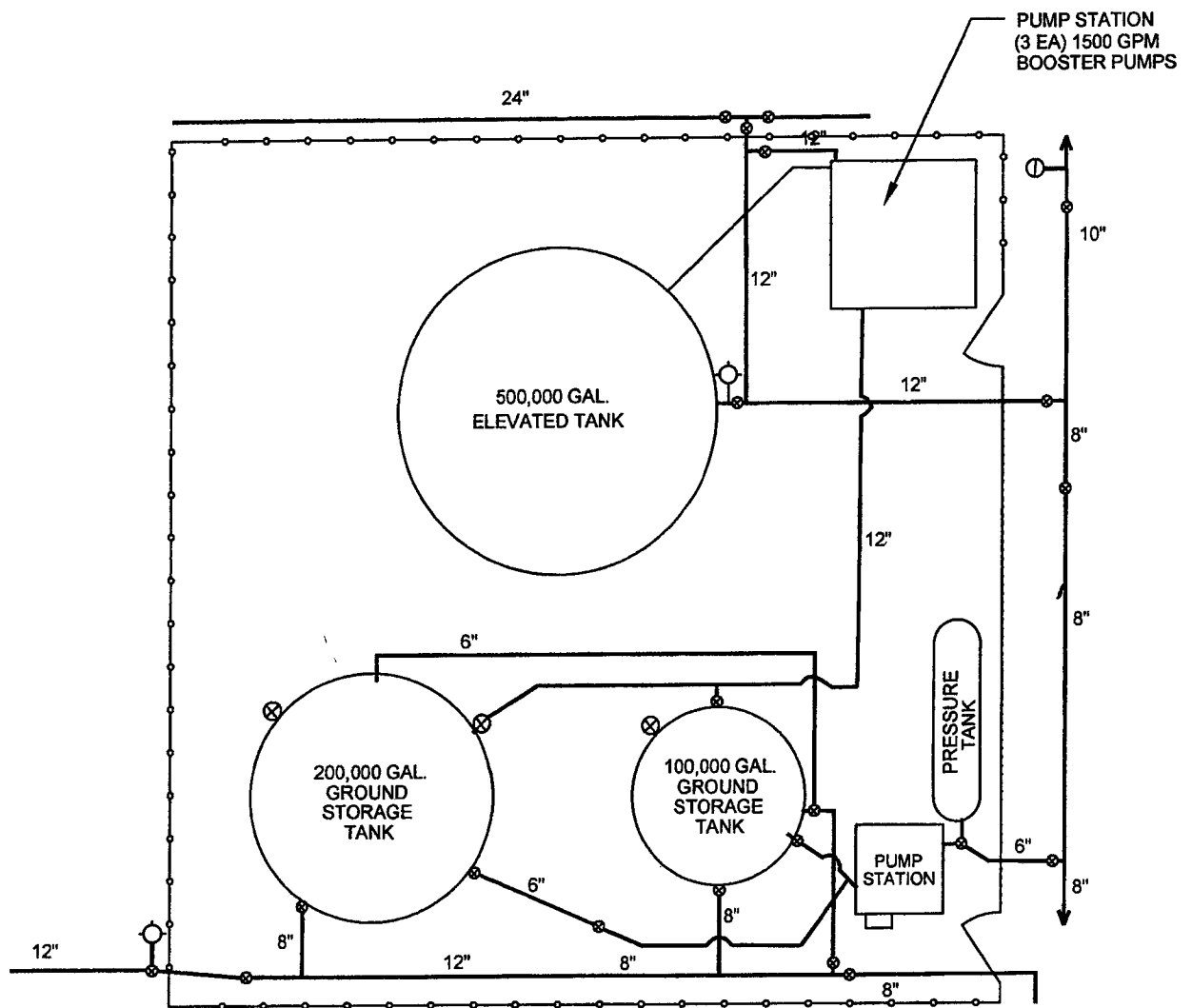


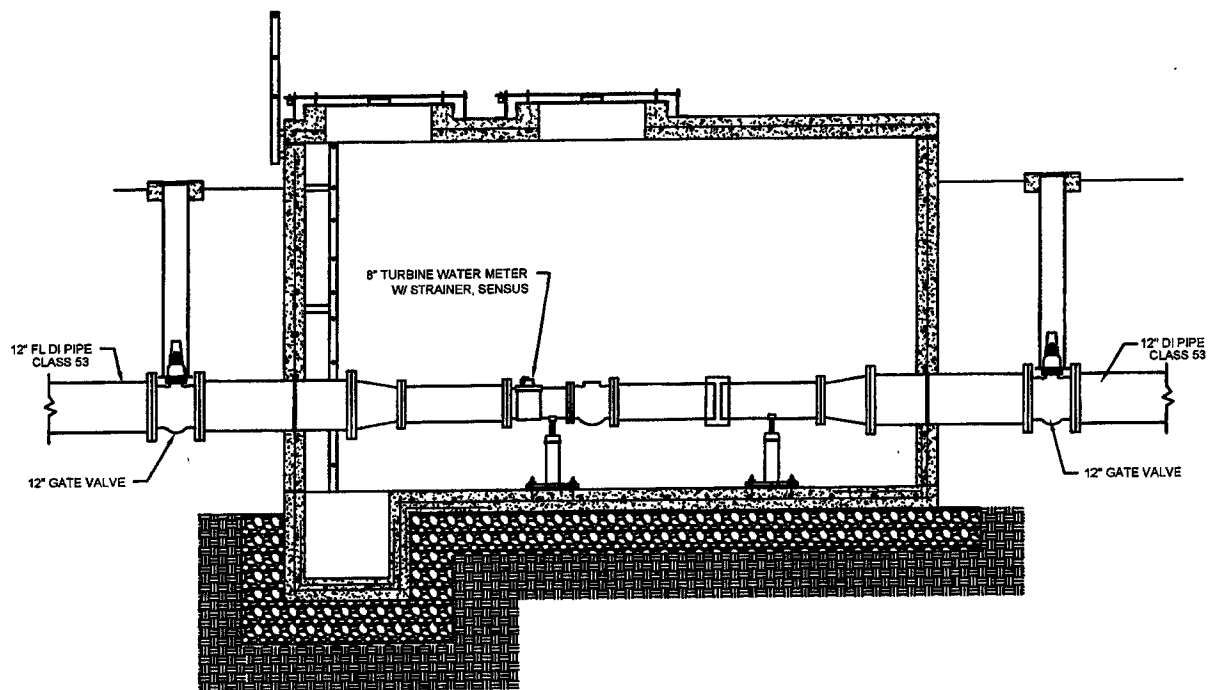
Exhibit Heath RFI 1-3



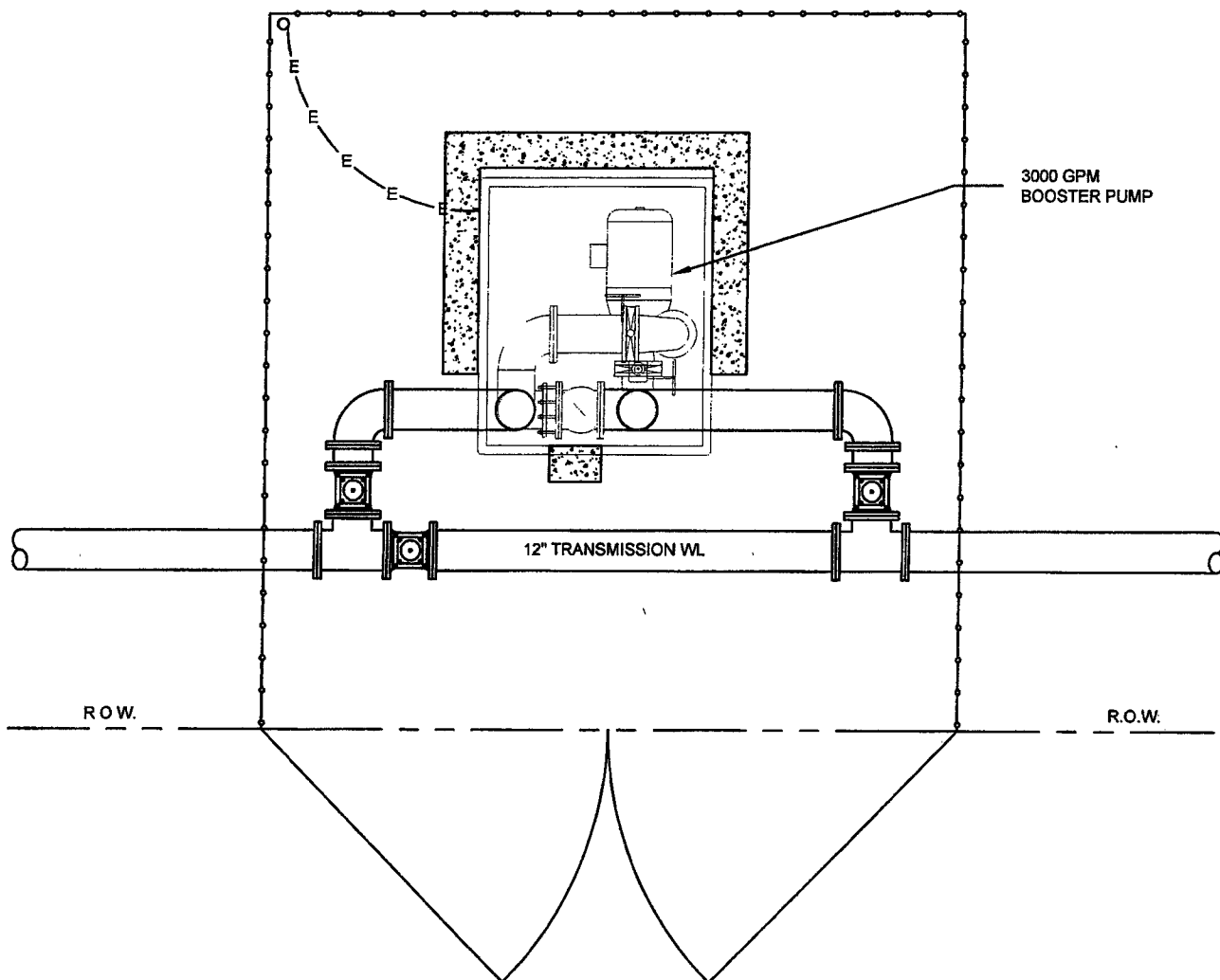
FM 460 PUMP STATION SITE
FORNEY LAKE WATER SUPPLY CORPORATION
KAUFMAN & ROCKWALL COUNTIES, TEXAS



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

Exhibit 4

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**
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

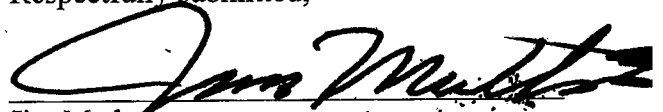
“supplemented” its response to RFI 1-8 by stating “[a]t this time [Forney Lake] can admit, *except for specific* distribution water lines located in the single certification area” Forney Lake provided no response to RFI 1-9.

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
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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

**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
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.