



Control Number: 44541



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SOAH DOCKET NO. 473-16-0193.WS
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PUBLIC UTILITY COMMISSION
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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 MOTION FOR SANCTIONS**

TO THE HONORABLE SARAH G. RAMOS:

COMES NOW Forney Lake Water Supply Corporation ("FLWSC" or "Forney Lake")
and files this Response to Heath's Motion for Sanctions.

I. BACKGROUND

On December 15, 2015, the City of Heath ("Heath") filed its Supplemental Motion for Sanctions in this matter. This response is timely filed.

II. RESPONSE

FLWSC has provided responsive information to the City of Heath. Despite the characterizations of Heath, FLWSC has provided information sufficient to determine that FLWSC does indeed have assets that will be rendered useless and valueless by virtue of Heath's application.

Heath argues that there is a threshold legal issue in this case: whether FLWSC will have assets that are deemed useless and valueless as a result of its decertification request in this docket. As a result, Heath refined its Requests for Information to obtain information related to FLWSC's system. FLWSC has not resisted such discovery. However, the merits of the

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argument are not germane to whether FLWSC provided adequate responses to Heath's RFIs. FLWSC asserts that it has.

FLWSC has not resisted discovery in any respect. Instead of globally responding to Heath's spurious motion, Heath attached an "Attachment A" to its Motion which provides a summary argument for its Motion. Heath will response to each below.

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.

Response: Heath appears to be troubled by FLWSC's production of a map that identifies the locations of the property FLWSC asserts is rendered useless and valueless by Heath's application. However, Heath sought the "location or address of the property" in subsection (b) above. FLWSC provided a map with highlighted areas of the property FLWSC asserts is subject

to this proceeding as well as the location of the pump stations and booster pump site. FLWSC provided the map to Heath in a digital portable document format that Heath can increase the size of or “zoom in” on to precisely show locations. The map is attached hereto as Exhibit 1-2(b).

FLWSC further previously detailed information on the booster pump sites in response to Heath RFI 2-3. The detailed drawings are attached as Exhibit RFI 2-3. Heath’s response does highlight that one of the gensets was inadvertently left off one of the drawings in Exhibit RFI 2-3. While the genset for one is shown in Exhibit RFI 2-3 (despite Heath’s assertion that no gensets were identified), this is something that FLWSC is correcting. Regarding a SCADA system, it is not a facility that would be shown on a drawing or map. It is part of the booster or pump station system but not a facility that would normally appear on such drawings.

FLWSC did provide book value information. See attached Exhibit RFI 1-2(f). The schedule provides cost data and the depreciation schedule used. Thus, FLWSC complied with Heath’s request for information.

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.

Response: FLWSC responded by providing the documents requested (i.e. those that relate to the property that will be rendered useless and valueless). Heath complains that FLWSC’s response does not “provide insight into how” the documents relate. With all due respect, the request does not ask for explanatory information. It is merely a request for the production of documents. FLWSC properly directed Heath to the responses with the relevant documents. FLWSC complied with the request.

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.

Response: Again this is a document production request. FLWSC provided the information requested. It appears that Heath's sole complaint is that FLWSC should have different information. Again, with due respect, producing information requested and HAVING the information Heath believes it wants are not the same thing. FLWSC is required to only provide the responsive documents, not provide the documents Heath wants FLWSC to have. FLWSC has provided the appropriate information and complied with the request.

HEATH 2-2. Please explain the basis for Forney Lake's response to Heath 2-1.

Response: FLWSC's engineer provided an adequate and full response. He took the service capacity numbers of the relevant facility and determined remaining capacity. Heath now complains that it cannot tell if the response is based on TCEQ minimum capacities or system peak. This is Heath again requesting a sanction for FLWSC providing a response to what Heath ASKED. Frankly, FLWSC should not be sanctioned for providing a proper response simply because Heath did not ask the question in the manner that would result in an answer it sought. FLWSC has provided the appropriate information and complied with the request.

HEATH 2-3. Please produce all documents concerning, reviewed, supplied to or by, or relied upon by Forney Lake to respond to HEATH 2-2.

Response: Heath admits that it received documents in response to this request. Heath complains that it "needs to understand the assumptions made and data relied upon." Yet, FLWSC once again points out that this is a document production request, not a request for an explanation. Heath further states that "it is unreasonable to believe that Forney Lake's engineer

did not document his calculations.” Heath makes this assertion without any foundation in fact. FLWSC produced the information its engineer utilized. FLWSC has provided the appropriate information and complied with the request.

HEATH 2-4. Please identify the amount of available additional capacity remaining in the following classes of facilities that Forney Lake contends will be rendered useless or valueless in Forney Lake’s response to Heath 1-2. By available additional capacity, Heath means the additional amount of capacity currently available to Forney Lake to provide water to its customers after demand is being met for the highest daily demand for water on Forney Lake’s system as such highest daily demand has occurred over the last thirty-six months.

Response: It is difficult to understand the basis for Heath’s complaint in FLWSC’s response. It appears that Heath is saying, sanction FLWSC because we do not believe the response. It provides that assertion without any basis in law, fact, or contrary assertion by a competent engineering professional. Simply because Heath does not want to believe a certain response does not make the response invalid or incomplete. FLWSC has provided the appropriate information and complied with the request.

HEATH 2-7 Please identify the monetary amount that Forney Lake contends is just and adequate to be paid to Forney Lake for the portions of the following classes of facilities that Forney Lake contends will be rendered useless or valueless in Forney Lake’s response to Heath 1-2.

- a. 1.5” waterline _____
- b. 2” waterline _____
- c. 2.5” waterline _____
- d. 4” waterline _____
- e. 6” waterline _____
- f. 8” waterline _____
- g. 10” waterline _____

- h. 12" waterline _____
- i. 100,000 gallon ground storage tank _____
- j. 150,000 gallon ground storage tank _____
- k. 200,000 gallon ground storage tank _____
- l. 500,000 gallon ground storage tank _____
- m. 500,000 gallon elevated tank _____
- n. 3,000 GPM booster pump station _____
- o. 1,500 GPM booster pumps and building _____
- p. 1,500 GPM booster pumps and building _____
- q. 1,500 GPM booster pumps and building _____
- r. 1,500 GPM booster pumps and building _____
- s. 1,500 GPM booster pumps and building _____
- t. 230 KW genset _____
- u. 275 KW genset _____
- v. Electrical/SCADA _____
- w. Valves and fittings _____
- x. Appurtenances _____
- y. Easements/Other Real Estate _____

Response: FLWSC responded by providing information based on Heath's stated assertion: that Heath is entitled to the property for which it will compensate FLWSC. If that is Heath's stated position, then FLWSC will be left without the facilities to provide service. Thus, FLWSC provided the appropriate response. FLWSC has provided the appropriate information and complied with the request.

HEATH 2-8 Please explain the basis for Forney Lake's response to HEATH 2-7.
HEATH 2-9 Please produce all documents concerning, reviewed, supplied to or by, or
relied upon by Forney Lake to respond to HEATH 2-7.

Response: FLWSC provided a detailed cost estimate to Heath. See attached Exhibit
leath 2-7. Heath complains that FLWSC did not provide the adequate basis for the amounts
contained in the worksheet. That assertion is incorrect. The basis of the amount is from
FLWSC's consulting engineer, Daniel & Brown, Inc. Such is clearly stated on Exhibit Heath
2-7. While Heath disputes the information provided, it cannot be granted sanctions merely
because it disagrees with the source of the information. FLWSC has provided the appropriate
information and complied with the request.

HEATH 2-13 In response to HEATH 1-3, Forney Lake states that capacity in its
facilities will be "stranded" if single certification is granted.
a. What does Forney Lake mean by the term "stranded" as used in its
response?
b. Does Forney Lake contend that the term "stranded" is synonymous
with "useless or valueless"?

Response: FLWSC responded by answer subpart (b) in the affirmative and referring the
reader to that response in subpart (a). Heath inexplicably seeks sanctions for FLWSC providing
a response. FLWSC will concede that Heath may not like FLWSC's response or agree with it.
However, to seek a sanction merely because it disagrees with a response is sanctionable behavior
by Heath in and of itself. There is no reasonable explanation as to how FLWSC did not provide
a complete response to the request. FLWSC has provided the appropriate information and
complied with the request.

HEATH 2-15 Please provide all contracts and other agreements relating to Forney
Lake's obligations to provide retail water utility service to the Trav
Ranch subdivision located in Kaufman County.

Response: FLWSC pulled the document from a local title company. Counsel
investigate whether the exhibits discussed by Heath were part of the final agreement or not.

HEATH 2-16. Please provide Forney Lake's two most recent audited, year-end Financial Statements. If an audit has not been prepared for the requested Financial Statements, please provide the most recent unaudited, year-end Financial Statement.

Response: Heath complains that FLWSC provided audited financials from 2009 and 2010. FLWSC is providing its two most recently audited financial statements. We have inquired of our auditor for the year 2014 and 2013. The 2009 and 2010 were the most recent he indicated he had. As described by Ms. Baley in her deposition, FLWSC does not maintain such copies on site. Despite Heath's assertions of what FLWSC has, the reality is FLWSC produced the information it has. FLWSC has provided the appropriate information and complied with the request.

HEATH 2-17. Please provide all worksheets, accounting ledgers, and other supporting documentation for the Fixed Assets entry in Forney Lake's Balance Sheet included in the most recent Financial Statement, including documentation for both "Plant, property and equipment" and for "Accumulated depreciation." If the requested information is in the possession of Forney Lake's auditor or other consultant, Forney Lake should instruct that person to provide the information.

Response: Heath contends that the information exists and FLWSC is refusing to provide it. Such assertion is not based in fact. FLWSC has requested information from its auditor. Indeed, FLWSC has produced the information that FLWSC itself has obtained. Any suggestion that FLWSC is "hiding" or "refusing" to produce documents is untrue. FLWSC has complied with the request by providing an explanation that it does not have the information.

HEATH 2-19. Please admit that Forney Lake's Comparative Balance Sheet dated December 31, 2010 (Exhibit 2) shows Forney Lake's total fixed assets as of December 31, 2010 to be \$2,634,637. If the requested information is in the possession of Forney Lake's auditor or other consultant, Forney Lake should instruct that person to provide the information.

Response: Heath admits that it did not provide the Exhibit 2 referred to in its request. Then takes the inexplicable position that FLWSC being unable to respond to it because of the

missing information is sanctionable. The curious part about this request for sanctions is that while Heath attempts to rail against FWLSC for allegedly not providing certain information it completely seeks to absolve itself for not providing a complete RFI. FLWSC is left to intuit Heath's request. This is not proper and not a basis for a request for sanctions. By indicating that it does not have enough information to provide a response is perfectly proper to an incomplete request. FLWSC provided a proper response and it is not sanctionable. Heath merely provided insufficient information to provide a response.

HEATH 2-20. Please admit that Forney Lake's Comparative Balance Sheet dated December 31, 2010 (Exhibit 2) shows Forney Lake's "Paid in Capital" to be \$2,327,787. If the requested information is in the possession of Forney Lake's auditor or other consultant, Forney Lake should instruct that person to provide the information.

Response: Heath admits that it did not provide the Exhibit 2 referred to in its request. Then takes the inexplicable position that FLWSC being unable to respond to it because of the missing information is sanctionable. The curious part about this request for sanctions is that while Heath attempts to rail against FWLSC for allegedly not providing certain information it completely seeks to absolve itself for not providing a complete RFI. FLWSC is left to intuit Heath's request. This is not proper and not a basis for a request for sanctions. By indicating that it does not have enough information to provide a response is perfectly proper to an incomplete request. FLWSC provided a proper response and it is not sanctionable. Heath merely provided insufficient information to provide a response.

HEATH 2-21. Please provide all worksheets, accounting ledgers, and other supporting documentation for the "Paid in Capital" entry in Forney Lake's Balance Sheet included in the most recent Financial Statement. If the requested information is in the possession of Forney Lake's auditor or other consultant, Forney Lake should instruct that person to provide the information.

Response: Heath contends that the information exists and FLWSC is refusing to provide it. Such assertion is not based in fact. FLWSC has requested information from its auditor. Indeed, FLWSC has produced the information that FLWSC itself has obtained. Any suggestion that FLWSC is "hiding" or "refusing" to produce documents is untrue. FLWSC has complied with the request by providing an explanation that it does not have the information.

HEATH 2-22. Please explain what values are included in "Paid in Capital" as shown on Forney Lake's Comparative Balance Sheet dated December 31, 2010 (Exhibit 2). If the requested information is in the possession of Forney Lake's auditor or other consultant, Forney Lake should instruct that person to provide the information.

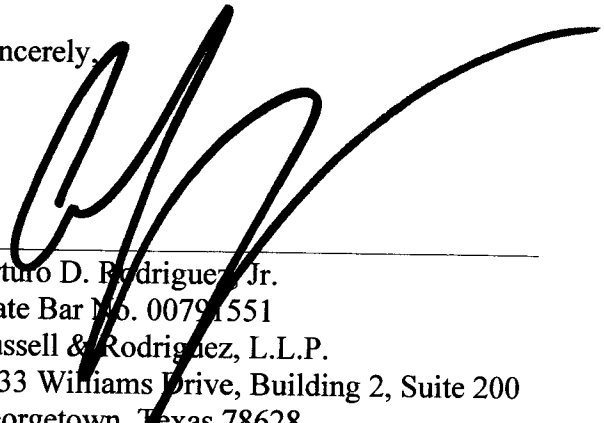
Response: Heath admits that it did not provide the Exhibit 2 referred to in its request. Then takes the inexplicable position that FLWSC being unable to respond to it because of the missing information is sanctionable. The curious part about this request for sanctions is that while Heath attempts to rail against FWLSC for allegedly not providing certain information it completely seeks to absolve itself for not providing a complete RFI. FLWSC is left to intuit Heath's request. This is not proper and not a basis for a request for sanctions. By indicating that it does not have enough information to provide a response is perfectly proper to an incomplete request. FLWSC provided a proper response and it is not sanctionable. Heath merely provided insufficient information to provide a response.

III. CONCLUSION

In short, FLWSC has provided the information requested. As stated above, some errors were discovered. FLWSC will correct the errors. However, FLWSC responded to each RFI.

While Heath may not like the responses and it may not like the manner in which it asked the question, the fact remains that FLWSC provide complete and appropriate responses to the RFIs. Heath's Motion seeks relief that is way out of proportion to what FLWSC sought. All sanctions sought by Heath should be overruled. FLWSC respectfully requests that the Motion for Sanctions sought by Heath be in all things overruled.

Sincerely,

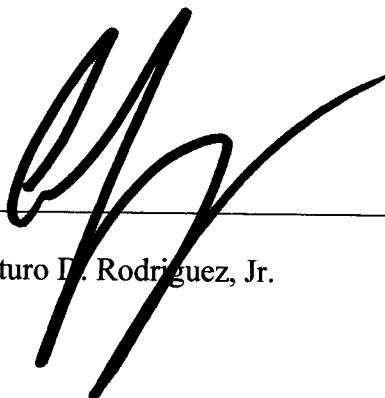


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ATTORNEY FOR FORNEY LAKE WATER
SUPPLY CORPORATION

CERTIFICATE OF SERVICE

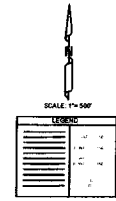
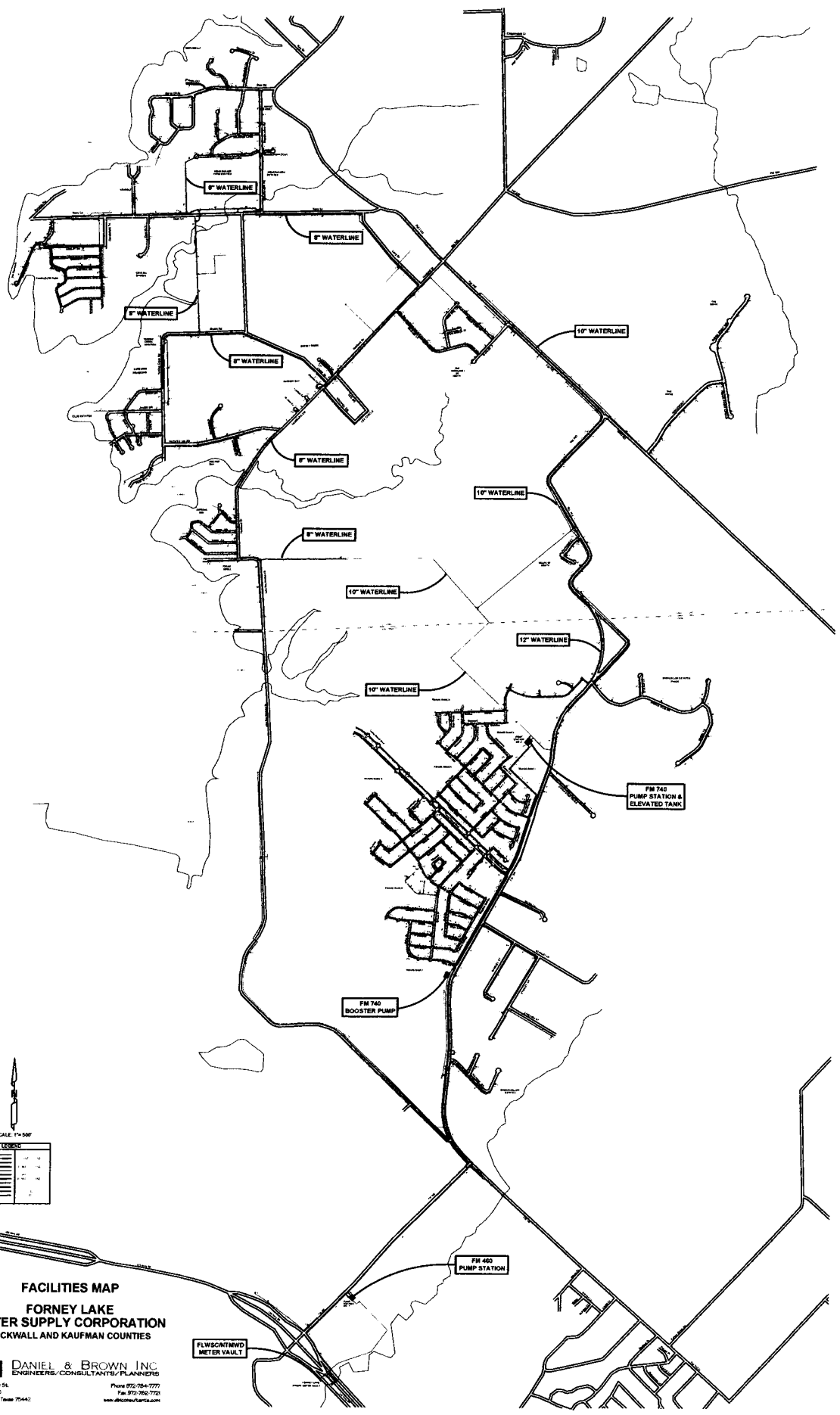
I hereby certify that on the 22nd day of December, 2015, a true and correct copy of the foregoing document was served on all parties in accordance with PUC Procedural Rule 22.74.



Arturo D. Rodriguez, Jr.

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8140 N. MoPac, Building 2, Suite 260
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Facsimile: (512) 703-2785
Representing City of Heath



FACILITIES MAP
FORNEY LAKE
WATER SUPPLY CORPORATION
ROCKWALL AND KAUFMAN COUNTIES

DBI DANIEL & BROWN INC.
ENGINEERS/CONSULTANTS/PLANNERS
100 McKinney St.
P.O. Box 6006
Ft. Worth, Texas 76142
Phone 817-784-7777
Fax 817-785-7725
www.danielbrown.com

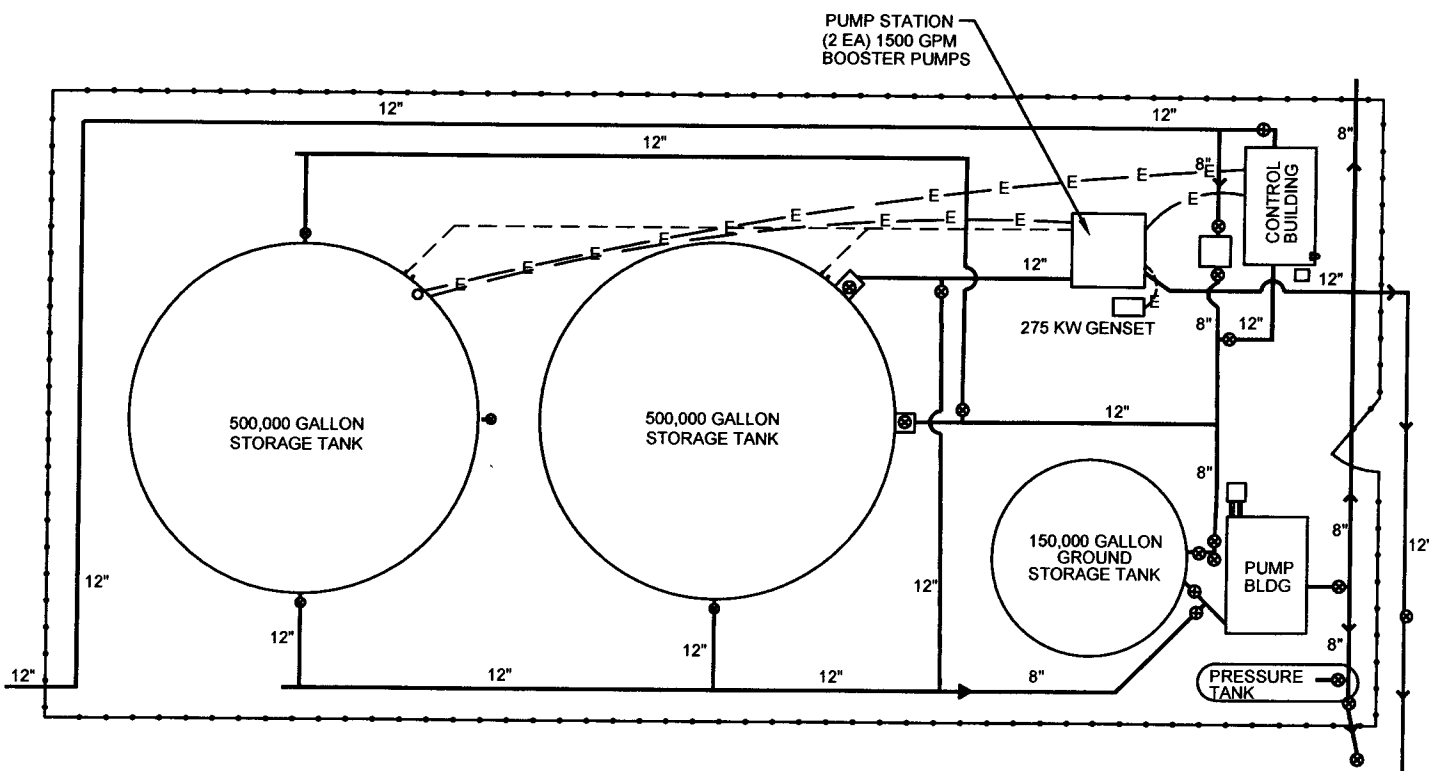
FLWSCHTMMWD
METER VAULT

FM 740
BOOSTER PUMP

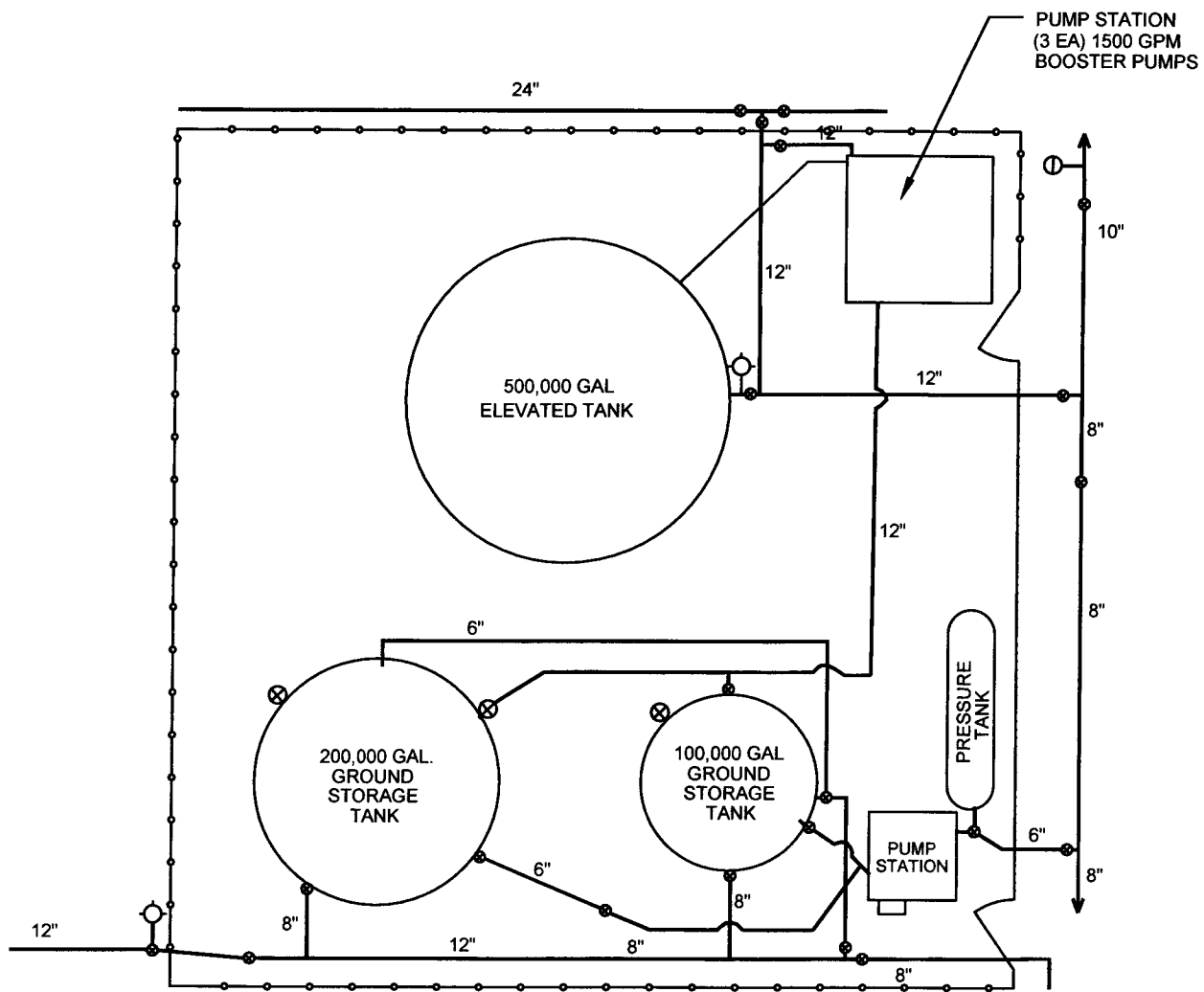
FM 745
PUMP STATION &
ELEVATED TANK

FM 480
PUMP STATION

EXHIBIT HEATH RFI 2-3



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

Exhibit Heath RFI 1-2(f)

FORNEY LAKE WSC-DISTRIBUTION SYSTEM

Description	Date	Rate	Cost
Distribution system see note (a)		2%	700,016.84
Storage building		5%	978.00
Meters		14%	9,626.28
Sandblast&paint tanks		10%	32,345.00
Fence		10%	5,062.96
Valve-Scenic		10%	578.63
Chlorinators Sta 1&2		10%	3,467.14
Cassing & Rd Crossing - Hubbard		10%	4,460.91
Chlorine Bldg, slab, equipment		10%	2,189.62
New pump		20%	2,300.00
TIC 6" line to 4" line Candlelite Park		10%	550.00
Myers Road Job		30yr	18,104.35
Lemley Job		30yr	3,655.06
Clemgill	1993	30yr	84,051.79
Candlelite	1993	30yr	55,763.47
740 Addn Replace 10000 LF 8	12/1/1994	30yr	125,600.54
Chlorinators	Dec-94	30yr	2,915.55
1" water service 118 Reba Lane	1995	40yr	600.00
Candlelight Addn	1995	40yr	9,483.53
8" water main -FM 740	1995	40yr	82,977.95
Cla Val PS #1	1995	40yr	3,660.00
Antiqua Bay	1995	40yr	3,113.85
Additions to meters, valves, etc	1996	40yr	2,354.82
ClaVal 6" - Pump station	1996	40yr	294.00
1/2 RCH tie in (\$16,181.05X.50)	1996	40yr	8,090.52
K&K development	1996	40yr	13,210.00
3" extension of Hubbard Drive	1996	40yr	1,200.00
M.Edwards release on top of line on Meadowview Lake	1996	40yr	2,400.00
Air compressor/breaker box-PS#2 Equipment	1996	40yr	1,560.91
Linda St & Saddle Club: 1" service bore&two 3/4" meters	1996	40yr	1,475.00
Water supply line Hwy 80 to PS #1	1997	30yr	133,891.81
1" water service under road at 600 Sorrita(Double R Utilities	1997	10yr	1,000.00
Water line C-900(FM 740 @ Saddle Club)	7/6/1999	40yr	35,236.00
Storage tower connection FM 740 pump Station	10/14/1999	40yr	9,569.15
3" water main FM 740 & Hubbard Drive	12/31/1999	40yr	9,934.93
Elevated storage tank	2/29/2000	30yr	442,752.36
Pump station improvements	12/19/2000	10yr	2,457.50
New services	6/30/2000	10yr	9,404.52
Transmitter-GE Automation	7/18/2000	5yr	930.00
Fire hydrant	2/1/2000	20yr	3,750.00
Tank painting	6/21/2001	10yr	128,385.00

FORNEY LAKE WATER SUPPLY CORPORATION		
ESTIMATED REPLACEMENT COSTS FOR STRANDED FACILITIES		
QUANTITY	ITEM DESCRIPTION	ESTIMATED COST
2,080	12" waterline with appurtenances @ \$50 per L.F.	\$104,000.00
15,486	10" waterline with appurtenances @ \$35 per L.F.	\$542,010.00
22,528	8" waterline with appurtenances @ \$25 per L.F.	\$563,200.00
1	200,000 gallon GST - FM 740 PS	\$300,000.00
1	500,000 gallon GST - FM 460 PS	\$600,000.00
1	500,000 gallon ET - FM 740 PS	\$1,000,000.00
1	3,000 GPM Booster Station - FM 740	\$125,000.00
LS	1,500 GPM Booster Pumps and Building (3 ea. @ FM 740 PS)	\$375,000.00
LS	1,500 GPM Booster Pumps and Building (2 ea. @ FM 460 PS)	\$300,000.00
1	230 KW GenSet - FM 740	\$100,000.00
1	275 KW GenSet - FM 460	\$115,000.00
LS	Electrical/SCADA FM 740 PS, FM 460 PS & FM 740 Booster Pump	\$150,000.00
LS	Valves/Fittings/Bores	\$125,000.00
13.80	approximate right-of-way and easement acreage @ \$5,000 per acre	\$69,000.00
	TOTAL REPLACEMENT COSTS	\$4,468,210.00

NOTE: The figures shown above are construction replacement estimates only.
Engineering/Legal/Administrative Costs are excluded.