

MEMORANDUM

TO: Board of Directors

FROM: Joe P. Cooper

DATE: March 20, 2013

RE: Heart of Texas Suppliers, LP and Mesquite Water Properties, LP
Applications for Operating Permits and Transfer Permits for Malish #1 and
Malish #2 Wells

TABLED

DESCRIPTION OF APPLICATIONS

Heart of Texas Suppliers, LP and Mesquite Water Properties, LP (collectively, "Applicant") have filed applications for Operating Permits and Transfer Permits for two wells to be located in Lee County, Texas. A map showing the locations of the two wells is attached as **Attachment A**. Applicant proposes to complete the wells in the Simsboro Aquifer and to withdraw an aggregate of 3,360 acre-feet of water per year from the two wells to be used for public water supply purposes in Williamson County. Each well will be designed to pump 1,100 gallons per minute.

On February 18, 2009, the District issued Reservation Permits to Elton Malish for the Malish #1 and Malish #2 Wells. Each permit provided for an annual withdrawal of 1,680 acre-feet of water per year to be used for public water supply in the City of Hutto, Williamson County, at an instantaneous production rate of 1,100 gallons per minute. The expiration dates of the permits are February 18, 2014. By a deed dated January 1, 2011, Elton Malish and wife, Judith Malish, conveyed the property on which the wells are located to Mesquite Water Properties, LP.

SUMMARY OF RECOMMENDATION

I recommend that the Board grant the applications under the terms and conditions set out in the draft permits attached as **Attachment B**. Under the draft permits, Applicant would be authorized withdraw an aggregate of 3,360 acre-feet per year from the Simsboro Aquifer from the two wells, at an instantaneous withdrawal rate of 1,100 gpm per well, for public water supply use in Williamson County, subject to a special condition stating that the permit is issued subject to any future production limits adopted by the District under District Rules.

RELEVANT CONSIDERATIONS UNDER DISTRICT RULES

District Rule 5.2.C provides ten criteria for evaluating Operating Permit applications.

(1) Conformance with Texas Water Code Chapter 36 and District Rules. The application conforms to Water Code requirements and is Administratively Complete under the District Rules.

(2) Unreasonable effect on existing groundwater and surface water resources or existing permit holders. The District’s hydrologists have advised that Applicant’s proposed withdrawal of 3,360 acre-feet per year from the two wells in Lee County will have a small impact on the water levels in the Simsboro Aquifer in the vicinity of the two wells. Drawdowns estimated with the Central Queen City-Sparta Groundwater Availability Model (GAM) for 2060, assuming production of the full permitted amount each year, are summarized in Table 1. As indicated in this table, the drawdown estimated to occur due to the permit applications is 6 feet across the entire District. Maps of drawdowns estimated by the GAM are attached as **Attachment C**.

Table 1. Projected drawdowns (in feet) in 2060 from pumpage included in Heart of Texas applications.

	Bastrop County	Lee County	Lost Pines District Total
Heart of Texas Pumping Only	3	9	6
Heart of Texas + Existing LPGCD Pumpage	82	265	168

The GAM is not a good tool to effectively evaluate impacts to surface water within the District based on this application. However, because the majority of the flow in the Colorado River is controlled by the release of water from the Highland Lakes, and because of the great distance from this project to the Colorado River, the applications will likely have little impact on flow in the Colorado River. There is no evidence that the applications will impact smaller streams and rivers.

(3) Dedicated to a beneficial use. Section 36.113(d) of the Texas Water Code provides that, in considering whether to grant or deny an application, a groundwater conservation district “shall” consider whether “the proposed use of water is dedicated to any beneficial use.”

Applicant has submitted an Amended and Restated Water Supply Agreement between Heart of Texas Suppliers, LP and the City of Hutto, and a First Amendment to that agreement, in which Heart of Texas Suppliers, LP agrees to provide up to 5,000,000 gallons per day (5,600 acre-feet per year) to the City. Applicant has stated

that water produced from the Malish #1 Well and the Malish #2 Well will be used to supply water to the City under this contract.

(4) Consistent with the District Management Plan. The proposed use is not inconsistent with the District Management Plan.

(5) Agreement to avoid waste and achieve water conservation. Applicant has submitted its drought contingency plan and the City of Hutto's water conservation plan and drought contingency plan.

(6) Reasonable diligence will be used to protect groundwater quality. Applicant has agreed to use reasonable diligence to protect water quality.

(7) Well plugging guidelines. Applicant has agreed to follow well plugging guidelines at the time of well closure.

(8) Management of total groundwater production on a long-term basis to achieve Desired Future Condition. See discussion in (2). The draft permit contains a special condition that provides notice that the permit is granted subject to any future production limits adopted by the District under its rules.

(9) Conditions to prevent waste, achieve water conservation, minimize drawdown or reduction of artesian pressure, or lessen well interference. See attached draft permits.

(10) History of non-compliance. Applicant does not have a history of non-compliance with the District Rules or Texas Water Code Chapter 36.

District Rule 6.3.B provides three additional criteria for evaluating Transport Permit applications. The Texas Water Code provides that a District "may not deny a permit based on the fact that the applicant seeks to transfer groundwater outside of the district but may limit a permit issued under this section" if the following issues "warrant the limitation:" (1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested; (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and (3) the approved regional water plan and the District Management Plan.

However, any limitation based on these considerations must (1) apply to all subsequent new permit applications and permit amendment applications, (2) bear a reasonable relationship to the existing District management plan, and (3) be reasonably necessary to protect existing uses.

The draft permits include a special condition subjecting the permits to future production limits adopted under District Rules.

**LOST PINES GROUNDWATER CONSERVATION DISTRICT
TRANSPORT PERMIT**

District Well Number: 5840415

Permit Approved: _____

Permittees:

Heart of Texas Suppliers, LP
4605 Post Oak Place Ste. 212
Houston, TX 77027

Location of Well: approximately .75 miles south of FM 112 on County Road 336 in Lee County (W097°07'44.0" N30°25'55.4"), Malish #2

Permittees are authorized to transfer water produced from Well No. 5840415 outside the boundaries of the Lost Pines Groundwater Conservation District under the following conditions:

Maximum annual transfer amount: an aggregated annual amount of not more than 3360 acre-feet per year from Well No. 5840415 and Well No. 5840418

Type of water use: Municipal

Place of water use: Williamson County

Standard Permit provisions:

This Transport Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Transport Permit, this Transport Permit includes the following provision:

- (1) Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited.

Term:

- (1) The term of this Transport Permit shall be three years if construction of a conveyance system has not been initiated prior to the issuance of the permit.
- (2) The term of this Transport Permit shall be thirty (30) years if construction of a conveyance system has been initiated prior to the issuance of the permit.

GENERAL MANAGER'S DRAFT TRANSPORT PERMIT

(3) A three-year term under subsection (1) shall automatically be extended to a 30-year term under subsection (2) if construction of a conveyance system is begun before the expiration of the initial three-year term.

Acceptance of this permit by the Permittee constitutes acknowledgment and agreement to comply with all of the terms, provisions, conditions, and restrictions stated in the permit and the rules of the Lost Pines Groundwater Conservation District.

ISSUED:

President, Lost Pines Groundwater
Conservation District Board of Directors

Date: _____

**LOST PINES GROUNDWATER CONSERVATION DISTRICT
OPERATING PERMIT**

District Well Number:5840418

Permit Approved: _____

Permittees:

Heart of Texas Suppliers, LP
4605 Post Oak Place Ste. 212
Houston, TX 77027

Mesquite Water Properties, L.P.
c/o Elton Malish
631 County Road 445
Taylor, Texas 76574

Location of Well: approximately .75 miles south of FM 112 on County Road 336 in Lee County (W097°06'30.9" N30°26'4.0"), Malish #1

Permittee is authorized to operate Well No. 5840418 within the Lost Pines Groundwater Conservation District under the following conditions:

Authorized annual withdrawal: See Special condition (1)

Maximum rate of withdrawal: 1100 gal/min

Aquifer unit: Simsboro

Type of water use: Municipal

Place of water use: Williamson County

Standard Permit provisions:

This Operating Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Operating Permit, this Operating Permit includes the following provisions:

- (1) This permit is granted in accordance with District Rules, and acceptance of this permit constitutes an acknowledgement and agreement that Permittee will comply with

GENERAL MANAGER'S DRAFT OPERATING PERMIT

the terms, conditions, and limitations set forth in this permit, the District rules, the orders of the Board, and the District Management Plan.

- (2) Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited.
- (3) Water produced from the well must be measured using a water measuring device or method approved by the District that is within plus or minus 10% of accuracy.
- (4) The well site must be accessible to District representatives for inspection, and permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.
- (5) The application pursuant to which this permit has been issued is incorporated in this permit by reference, and this permit is granted on the basis of and contingent upon the accuracy of the information provided in that application. A finding that false or inaccurate information has been provided is grounds for revocation of the permit.
- (6) Violation of the permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawals, may subject the permittee to enforcement action under District Rules.
- (7) Whenever the special conditions in the permit are inconsistent with other provisions of the permit or the District Rules, the special condition will prevail.

Special conditions:

This Operating Permit is granted subject to the following special conditions:

- (1) The authorized annual withdrawal amount under this permit is hereby aggregated with the authorized annual withdrawal amount for the following designated wells: Well No. 5840415 (Malish #2). Subject to the terms of this permit, Permittee may withdraw an aggregated annual withdrawal amount of not more than 3360 acre-feet per year from Well No. 5840418 and the designated wells.
- (2) This permit is issued subject to any future production limits adopted by the District under the District Rules.

Term:

- (1) This Operating Permit shall automatically terminate if, within 180 days of the date of issuance of the permit (1) the permitted well has not been completed or (2) the well log required by Texas Occupations Code Section 1901.251 has not been filed with

GENERAL MANAGER'S DRAFT OPERATING PERMIT

the District, unless the Permittee files a request for an extension of time to drill the well as provided in the District Rules.

(2) This Operating Permit shall automatically terminate if, within 24 months of the date that the permitted well is completed, the Permittee has not used water from the permitted well for a purpose authorized in the Operating Permit, unless the Permittee requests an extension of time to operate the well as provided in the District Rules.

(3) This Operating Permit shall be effective for a period of five years from the date the permit is approved, unless terminated, amended or revoked as provided in the District Rules.

Acceptance of this permit by the Permittee constitutes acknowledgment and agreement to comply with all of the terms, provisions, conditions, and restrictions stated in the permit and the rules of the Lost Pines Groundwater Conservation District.

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President, Lost Pines Groundwater
Conservation District Board of Directors

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Mesquite Water Properties, L.P.
c/o Elton Malish
631 County Road 445 Taylor, Texas 76574

Location of Well: .75 mi S of FM 112 on CR 336 in Lee County(W097°06'34.6" N30°26'10.6"),
Malish #1

Permittees authorized to transfer water produced from Well No. 5840418 outside the boundaries of the Lost Pines Groundwater Conservation District under the following conditions:

Maximum annual transfer amount:an aggregated annual amount of not more than 3360 acre-feet per year from Well No. 5840415 and Well No. 5840418

Type of water use: Municipal

Place of water use: Williamson County

Standard Permit provisions:

This Transport Permit is granted subject to the District Rules, the orders of the Board, the District Management Plan, and Chapter 36 of the Texas Water Code. In addition to any well-specific permit provisions and special conditions included in this Transport Permit, this Transport Permit includes the following provision:

- (1) Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited.

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- (2) The term of this Transport Permit shall be thirty (30) years if construction of a conveyance system has been initiated prior to the issuance of the permit.
- (3) A three-year term under subsection (1) shall automatically be extended to a 30-year term under subsection (2) if construction of a conveyance system is begun before the expiration of the initial three-year term.

Acceptance of this permit by the Permittee constitutes acknowledgment and agreement to comply with all of the terms, provisions, conditions, and restrictions stated in the permit and the rules of the Lost Pines Groundwater Conservation District.

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Permittee is authorized to operate Well No. 5840415 within the Lost Pines Groundwater Conservation District under the following conditions:

Authorized annual withdrawal: See Special condition (1)

Maximum rate of withdrawal: 1100 gal/min

Aquifer unit: Simsboro

Type of water use: Municipal

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GENERAL MANAGER'S DRAFT OPERATING PERMIT

- (3) Water produced from the well must be measured using a water measuring device or method approved by the District that is within plus or minus 10% of accuracy.
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- (6) Violation of the permit's terms, conditions, requirements, or special provisions, including pumping amounts in excess of authorized withdrawals, may subject the permittee to enforcement action under District Rules.
- (7) Whenever the special conditions in the permit are inconsistent with other provisions of the permit or the District Rules, the special condition will prevail.

Special conditions:

This Operating Permit is granted subject to the following special conditions:

- (1) The authorized annual withdrawal amount under this permit is hereby aggregated with the authorized annual withdrawal amount for the following designated wells: Well No. 5840418 (Malish #1). Subject to the terms of this permit, Permittee may withdraw an aggregated annual withdrawal amount of not more than 3360 acre-feet per year from Well No. 5840415 and the designated wells.
- (2) This permit is issued subject to any future production limits adopted by the District under the District Rules.

Term:

- (1) This Operating Permit shall automatically terminate if, within 180 days of the date of issuance of the permit (1) the permitted well has not been completed or (2) the well log required by Texas Occupations Code Section 1901.251 has not been filed with the District, unless the Permittee files a request for an extension of time to drill the well as provided in the District Rules.
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