

**SOAH DOCKET NO. 952-13-5210**

<b>APPLICATIONS OF END OP, L.P.</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>FOR WELL REGISTRATION,</b>	<b>§</b>	
<b>OPERATING PERMITS,</b>	<b>§</b>	<b>OF</b>
<b>AND TRANSFER PERMITS</b>	<b>§</b>	
	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**ORDER NO. 5  
DENYING ENVIRONMENTAL STEWARDSHIP, BETTE BROWN, ANDREW MEYER  
AND DARWYN HANNA'S REQUEST FOR CERTIFIED QUESTION OR,  
ALTERNATIVELY, REQUEST FOR PERMISSION TO SEEK INTERLOCUTORY  
APPEAL OF ORDER NO. 3, AND MOTION TO ABATE, OR ALTERNATIVELY,  
REQUEST FOR PROVISIONAL PARTY STATUS**

On October 7, 2013, Environmental Stewardship, Bette Brown, Andrew Meyer, and Darwyn Hanna (collectively, Protestants) filed a Request for Certified Question or, Alternatively, Request for Permission to Seek Interlocutory Appeal of Order No. 3, and Motion to Abate, or, Alternatively, Request for Provisional Party Status. On October 10, 2013, End Op, L.P. (End Op), the General Manager (General Manager) of Lost Pines Groundwater Conservation District (District), and Aqua Water Supply Corporation (Aqua) responded to the Request to Certify, the Motion to Abate, and Request for Provisional Party Status. On October 14, 2013, Protestants filed a reply to the responses regarding Order No. 4.

Because Order No. 3 denied party status to Protestants, they move to have the Administrative Law Judge (ALJ) certify to the District the following question: Does the ownership of groundwater subject to potential drawdown as the result of a groundwater operating permit application constitute a personal justiciable interest in the application? If the ALJ does not certify the issue to the District, they request that he permit an interlocutory appeal of Order No. 3. If either request is granted, Protestants further request that this proceeding be abated pending a District decision or that they receive provisional party status pending a District decision. The General Manager responded and argues that there is no authority in either the District Rules, the Administrative Procedures Act, or the SOAH rules that allows the ALJ to certify an issue to the District. The General Manager also argues that certification directly contradicts the District's referral of the question to SOAH. The General Manager points out that

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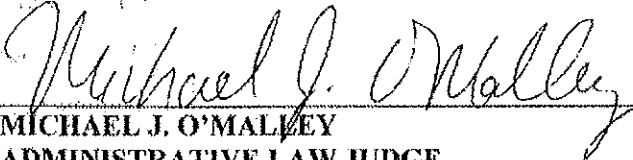
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the District specifically referred the standing issues to SOAH and, therefore, it would be inappropriate to send it back to the District to decide. The General Manager suggests that the only plausible method for the District to decide the issue is if the ALJ converts Order No. 3 to a proposal for decision (PFD). Aqua also suggests that a PFD would allow the District to make a decision on the issue of party status. The General Manager and Aqua recognize that if the ALJ converts Order No. 3 to a PFD and allows the District to decide the issue, then the current case would have to be abated pending the District's decision and any subsequent decision by a reviewing court. In their October 14, 2013 reply, the Protestants also support converting Order No. 3 to a PFD.

The ALJ **DENIES** Protestant's Request for Certified Question and Request for Permission to Seek Interlocutory Appeal of Order No. 3. The ALJ further **DENIES** Protestant's Motion to Abate, or, Alternatively, Request for Provisional Party Status. The ALJ finds that there is not authority under the District rules or the SOAH rules to certify an issue to the District. Furthermore, there is no authority or precedent for converting an interim order into a PFD. The suggestion of converting an interim order to a PFD is highly irregular and disruptive to the process at SOAH. Because the ALJ declines to certify the issue or convert Order No. 3 to a PFD, there is no reason to abate the proceeding or grant provisional party status. Accordingly, this case shall proceed under the procedural schedule adopted in Order No. 2.

**SIGNED October 15, 2013.**

  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING

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**STYLE/CASE:** APPLICATION OF END OP LP FOR OPERATING PERMITS  
**SOAH DOCKET NUMBER:** 952-13-5210  
**REFERRING AGENCY CASE:**

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**STATE OFFICE OF ADMINISTRATIVE HEARINGS** **ADMINISTRATIVE LAW JUDGE**  
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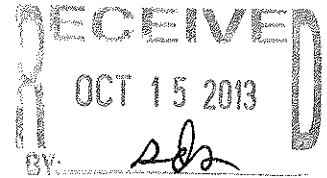
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BETTE BROWN

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REGARDING: ORDER NO. 5 - DENYING PROTESTANT'S REQUEST FOR CERTIFIED QUESTION OR, ALTERNATIVELY, REQUEST FOR PERMISSION TO SEEK INTERLOCUTORY APPEAL OF ORDER NO. 3, AND MOTION TO ABATE, OR ALTERNATIVELY, REQUEST FOR PROVISIONAL PARTY STATUS

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