

**APPLICATIONS OF END OP, L.P.
FOR OPERATING PERMITS AND
TRANSFER PERMITS**

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**BEFORE THE
LOST PINES GROUNDWATER
CONSERVATION DISTRICT**

**AQUA WATER SUPPLY CORPORATION'S
REQUEST FOR CONTESTED CASE HEARING**

In accordance with Lost Pines Groundwater Conservation District's (the "District's") Rule 14.3(D) and Section 36.415(b) of the Texas Water Code, Aqua Water Supply Corporation ("Aqua WSC") respectfully files this Request for Contested Case Hearing to protest End Op, L.P.'s ("End Op's") 14 (fourteen) applications for operating permits and transfer permits, and would show as follows:

I. INTRODUCTION AND BACKGROUND

Aqua WSC owns and operates several existing wells permitted by the District, and has pending before the District several permit applications for proposed new wells. These wells provide a source of public water supply for Aqua WSC's provision of public water service. Aqua WSC is a non-profit water supply corporation owned by its member-customers and governed by an eight-member Board of Directors elected by its member-customers. Aqua WSC serves over 17,000 connections, which include more than 50,000 people. These customers include homeowners, farmers, ranchers, and local businesses located within Aqua WSC's 950-square mile service area. This service area is located in six Texas counties, including most of Bastrop County and parts of Caldwell, Fayette, Lee, Travis and Williamson Counties. Aqua WSC's service area is defined by Certificate of Convenience ("CCN") No. 10294 issued by the Texas Commission on Environmental Quality.

This request is sought to protect Aqua WSC's interests in its existing and proposed wells and the groundwater rights in the Simsboro aquifer, which are associated with these wells. Aqua WSC asserts in this section and the sections below that it meets the District's requirements for contesting and participating in a hearing on End Op's permit applications. In brief summary, Aqua WSC has the type of justiciable interest required to protest and qualify as a party to a contested case hearing on End Op's pending applications on account of Aqua WSC's ownership of Simsboro groundwater rights, groundwater wells and related utility infrastructure, and its interest in permits issued by the District and applications pending before the District. Aqua WSC is a proper party to a hearing on these applications because Aqua WSC's interests in these wells will be affected by End Op's applications, if those applications are granted. Aqua WSC's particularized interests and the uniqueness of the impacts of End Op's proposed pumping on Aqua WSC's wells are within the regulatory authority of the District to consider and address. Aqua WSC's interests are not the type of interests common to members of the public.

Aqua WSC understands that the District may set a preliminary hearing within 35 days of its initial April 17th hearing, in accordance with District Rule 14.3(E). It is understood that District Rules 14.3 and 14.4 provide the District with discretion to address, among other things, discovery and other procedures that will govern the contested case hearing, and the possibility that the parties be encouraged to reach agreement on these procedures and/or consider what issues may be agreed upon or settled amicably. Aqua WSC stands ready to introduce evidence and arguments in support of its

justiciable interest, how that interest is impacted by End Op's applications, and how the District's regulatory jurisdiction is implicated. Aqua WSC also looks forward to open dialogue among the parties prior to the hearing on the merits to discuss what issues may be agreed upon or settled amicably.

II. AQUA WSC MEETS THE APPLICABLE STANDARDS TO CONTEST END OP'S PERMIT APPLICATIONS

Aqua WSC meets the District's requirements for contesting and participating in a hearing on End Op's permit applications. Aqua WSC has complied with the filing requirement under the District's rules (1) by timely submitting this written request at least five days prior to the meeting at which the applications are to be considered and (2) asserting its justiciable interest affected by the Board's potential action on the applications, which justiciable interest is not common to members of the public. The applicable requirements are contained in District Rule 14.3(D), which requires, in pertinent part:

A request for a contested case hearing on the Application, to be conducted under Rule 14.4, must be made in writing and filed with the District no later than the 5th day before the date of the Board meeting at which the Application will be considered. A request for a contested case hearing may be granted if the request is made by...a person who has a personal justiciable interest that is related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and that is affected by the Board's action on the Application, not including persons who have an interest common to members of the public.

See also Tex. Water Code § 36.415(b)(2), which provides that the District shall:

limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a district's regulatory authority

and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public.

Aqua WSC's justiciable interest is evidenced by its legal rights and economic interests in its District-issued Simsboro permits; Simsboro-related permit applications pending with the District; and ownership and interests in Simsboro wells, well sites, and utility infrastructure. Aqua WSC's justiciable interest related to a legal duty, privilege, and power is reflected by (i) its statutory and regulatory obligations to provide continuous and adequate water utility service within its certificated service area (reference CCN No. 10294) pursuant to Chapters 13 and 67 of the Texas Water Code, and regulations of the Texas Commission on Environmental Quality set forth in Chapters 290 and 291 within Title 30 of the Texas Administrative Code; (ii) its statutory and regulatory obligations related to its District-issued permits; and (iii) and its water utility-related contractual obligations. Each of these justiciable interests has a nexus to End Op's permit applications pending before the District because of the likelihood of adverse impact from End Op's proposed activities on Aqua WSC's asserted interests. If granted, End Op's proposed drilling of and withdrawal from wells located in the Simsboro aquifer will directly impact (1) the availability of groundwater for withdrawal from Aqua WSC's existing and proposed wells and (2) the productive capacity of Aqua WSC's existing and proposed wells. If granted, End Op's pumping will contribute to and result in District-wide permitted withdrawals in excess of the Modeled Available Groundwater, which is expected to cause unacceptable drawdown of Simsboro aquifer levels that compromise the Desired Future Conditions and may require the District to impose restrictions on

existing permit holders, including Aqua WSC. Aqua WSC specifically refers to the General Manager's recommendation on End Op's applications at page 2, and is prepared to put on evidence and argument in support of this argument.

End Op's applications seek operating and transfer permits that would authorize the aggregated withdrawal from up to 14 (fourteen) wells of 56,000 (fifty-six thousand) acre feet of groundwater from the Simsboro aquifer. It is Aqua WSC's understanding that the applications are composed of hundreds to thousands of pages contained within 14 sets of application folders and other reports, studies, models, maps and other documents. On its face, the applications and associated documents are certainly voluminous and substantively complex. Aqua WSC has requested complete copies of End Op's permit applications and associated documents, as amended, but to date has not received the entire set of these copies. Based upon Aqua WSC's evaluation of End Op's application files available in the 2008 timeframe and the District General Manager's March 20, 2013 report, Aqua WSC has concluded that End Op's proposed project will have direct, physical impacts on several of Aqua WSC's existing and proposed wells and may cause the District to impose restrictions on *existing* permit holders, including Aqua WSC.

For all these reasons, Aqua WSC meets both the District's regulatory standard and the statutory threshold for requesting a contested case hearing and qualifying as a party to the hearing. Aqua WSC's interests are in jeopardy and would be adversely affected by the activities contemplated in End Op's pending applications, and the District has regulatory authority over End Op's pending applications and authority to provide the relief sought by Aqua WSC to avoid impairment of Aqua WSC's interests.

In summary, Aqua WSC will be directly, substantially, and adversely affected, and will suffer significant economic harm and hardship, if the District grants the above-referenced permit applications and issues permits consistent with the relief requested by End Op. For the grounds stated herein, Aqua WSC respectfully requests that a contested case hearing be held and that Aqua WSC be named as a party to any hearing of the District on the above-referenced permit applications. Aqua WSC will appear at District hearings and meetings and be prepared to offer evidence in support of this request.

III. PARTICIPATION IN DISTRICT'S PRELIMINARY HEARING AND DEVELOPMENT OF PROCEDURAL SCHEDULE

District Rules 14.3 and 14.4 contemplate that one or more initial or preliminary hearings will be held for the District's Board of Directors and/or Presiding Officer to take jurisdiction, determine whether the hearing is contested, recognize and possibly align parties, and consider and adopt a schedule for discovery and subsequent procedures and timeline for the hearing on the merits. Aqua WSC looks forward to open dialogue among the parties to discuss what issues may be agreed upon or settled amicably, and to providing responsive feedback to the District's Board of Directors and Presiding Officer.

In the event the District intends to prepare for and address one or more of these issues at the April 17, 2013 hearing, Aqua WSC respectfully provides the following comments:

(1) alignment of parties

Aqua WSC seeks the District's designation of Aqua WSC as a party. At this time, Aqua WSC is unaware of any other stakeholders who may seek party status. Aqua WSC believes that it is uniquely situated and will not likely be a

candidate for party alignment; however, Aqua WSC will be prepared to address party alignment issues at the hearing.

(2) adoption of a schedule and protocol for conducting discovery

Aqua WSC seeks a reasonable opportunity to conduct meaningful discovery in this proceeding. District Rule 14.4(D) contemplates that discovery may be necessary for applications as technically complex and significant as End Op's—significant in terms of the volume of groundwater requested, the likelihood of affecting other groundwater users and the groundwater resource itself, as well as the implications to the District's management plan. Aqua WSC requests that parties be permitted to serve on each other: requests for disclosure, production, and admissions; depositions on written questions; and no more than 25 interrogatories; and be permitted to conduct no more than 25 hours of oral depositions on each other party's witnesses, with this time limit excluding third-party witnesses.

(3) adoption of a procedural schedule that will govern discovery, dispositive motions, and all other procedure through the final evidentiary hearing, hearing report (if applicable), request(s) for rehearing, and any appeal

Aqua WSC suggests a schedule that allows for a 75-90 day discovery period, during which dispositive motions could be filed at the District, with an evidentiary hearing to be held in the fourth month (i.e., the month following the end of discovery). A prehearing conference or conferences may be helpful in the discretion of the Presiding Officer, depending whether dispositive motions are filed or whether there are any discovery disputes.

(4) scheduling of subsequent hearings

Aqua WSC's representatives will bring their calendars and be prepared to commit to subsequent hearing dates and other procedural deadlines.

At the time this request is filed, Aqua WSC has not received the complete set of End Op's permit applications, as amended, and all associated reports, studies, models, maps and other documents upon which End Op will be relying in support of its applications. Aqua WSC urges the District to afford itself and other qualifying parties an opportunity to receive and review this information as soon as possible after commencement of the

hearing on April 17, 2013. It would prejudice Aqua WSC to proceed with the hearing absent Aqua WSC's opportunity to conduct a meaningful review of this information in advance of the hearing, and to conduct discovery on matters directly related to the applications. Aqua WSC looks forward to sharing information relevant to this proceeding that may be requested by other parties.

PRAYER

WHEREFORE, premises considered, Aqua WSC respectfully requests that the District provide the following relief:

- (1) declare the hearing on End Op's applications to be contested;
- (2) designate Aqua WSC a qualified party to this contested case hearing;
- (3) afford Aqua WSC and all parties to this proceeding an opportunity to conduct meaningful discovery and to develop and present evidence and legal arguments before the Board or Hearings Examiner by setting a docket control schedule with deadlines and a timeline for discovery and an evidentiary hearing;
- (4) deny the pending applications, if the Board desires to proceed with the evidentiary hearing, on grounds including but not limited to grounds that the applications fail to satisfy the relevant criteria in the applicable rules and statutes; and
- (5) such other and further relief as the District may find appropriate and Aqua WSC to be entitled.

Respectfully submitted,

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ATTORNEYS FOR
AQUA WATER SUPPLY CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of April, 2013, a true and correct copy of the foregoing document was provided to the following parties by the method shown below each party:

End Op, L.P.
1010 Provident Lane
Round Rock, Texas 78664
(via first class mail)

Applicant End Op, L.P. (as noticed in the
General Manager's proposed permits)

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Representing Lost Pines
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Lost Pines Groundwater Conservation
District's General Manager and Assistant
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