

SOAH DOCKET NO. 952-13-5210

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

AQUA WATER SUPPLY CORPORATION'S MOTION FOR LEAVE AND RESPONSE TO ORDER NO. 4

Aqua Water Supply Corporation ("Aqua WSC") files this motion for leave to submit this response to Order No. 4, along with the associated response, due to the potential impact to Aqua WSC of further delay and the expenditure of resources if a second hearing were required on End Op, L.P.'s applications.

I. AQUA WSC'S INTEREST

As a party to the hearing in the above-referenced docket, Aqua WSC is directly affected by Environmental Stewardship, Bette Brown, Andrew Meyer, and Darwyn Hanna's (the "Protestants") *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* (the "Protestants' Request") and the State Office of Administrative Hearings ("SOAH's") request for a response to Protestants' Request pursuant to Order No. 4. Aqua WSC is interested in efficiency, fairness, and proper use of the parties' and SOAH's resources and wishes to avoid having to conduct the hearing on the merits twice if SOAH's decision on party status in Order No. 3 were to be reversed after the conclusion of the hearing on the merits. As a result, Aqua WSC respectfully requests that SOAH allow Aqua WSC to make the response set forth in this motion and response.

Aqua WSC respectfully requests that SOAH issue a Proposal for Decision ("PFD") making its decision on party status a final decision of SOAH and, therefore, subject to review and decision by the Lost Pines Groundwater Conservation District's (the "District's") Board of Directors (the "Board"). Although Aqua WSC does not have a direct interest in the Protestants' request for certified question, Aqua WSC believes that the issuance of a PFD by SOAH at this point would resolve the issues associated with the request for certified question because the PFD would allow the party status issue to come before the District's Board for review of the PFD, consideration of the Protestants' certified question, and ultimate decision by the District's Board.

This approach would be consistent with what appeared to be the intent of the District's Board when the Board remanded the issue of party status to SOAH. The District's rules allow the Board to conduct the hearing on party status and also allow the Board to delegate to SOAH the responsibility to conduct the hearing on party status. It appeared from the Board's deliberation of party status at the District's preliminary hearing that it desired to have SOAH develop the facts relevant to determining party status. It is evident from the Protestants' Request that the Protestants believe that novel policy and legal issues arose during SOAH's hearing on party status that ultimately must be decided by the District's Board. It is also evident that the Protestants intend to appeal the decision on party status. Whether or not Protestants prevail, litigation will delay End Op's project. If one or more Protestants prevail in court, then a remand back to SOAH will require another hearing. It is that potential outcome that Aqua WSC wishes to avoid.

Accordingly, Aqua WSC requests that the hearing on the merits be abated until the District has made a final decision on party status, and all administrative remedies and appeals have been exhausted, if necessary. Neither the District rules, SOAH's procedural rules, Chapter

36 of the Water Code, nor the applicable provisions of Chapter 2001 of the Government Code address the appropriate procedure in this instance. As a result, in the interest of efficiency, fairness and the parties' and SOAH's resources, it is proper for SOAH to bifurcate the party status and hearing on the merits portions of the District's referral to SOAH and to issue a PFD providing SOAH's final decision on party status. The issuance of a PFD would then allow the District's Board to consider the PFD and the issues associated with the Protestant's certified question, and to make a decision on party status. The hearing on the merits can then commence once a final, unappealable decision on party status has been rendered by the District or a reviewing court, if necessary. Abatement of the hearing on the merits before SOAH would benefit all parties and SOAH.

II. CERTIFICATE OF CONFERENCE

On October 10-11, 2013, the undersigned conferred by telephone and email with the counsel of record for each of the parties to this hearing regarding Aqua WSC's intent to submit this motion. David Lein, counsel for the General Manager of the District, indicated that his client is not opposed to this motion. Stacey Reese, counsel for End Op, L.P., indicated that her client is opposed to this motion.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Aqua WSC respectfully requests that SOAH grant all of the relief set forth above. More specifically, Aqua WSC requests that SOAH grant the following relief:

- (1) leave to file this motion and response;

- (2) issuance of a Proposal for Decision to allow the party status issue to be decided by the District's Board of Directors;
- (3) abatement of the hearing until such time that the party status issue has been finally resolved by the District's Board of Directors, or a reviewing court, if an appeal is pursued; and
- (4) such other and further relief, whether in law or in equity, whether special or general, to which Aqua WSC may show itself to be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2013, a true and correct copy of the foregoing document was served in accordance with rules of the State Office of Administrative Hearings and the Texas Rules of Civil Procedure on the following counsel of record:

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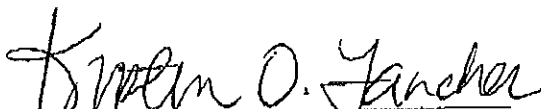
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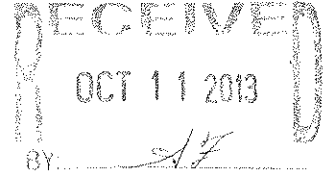

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TELECOPIER COVER SHEET

October 11, 2013



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No. of Pages: 5 + cover sheet

Re: Aqua WSC's Motion for Leave and Response to Order No. 4

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5800.

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