

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

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

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**Environmental Stewardship, Bette Brown, Andrew Meyer, and Darwyn  
Hanna's (Collectively "Protestants")  
Reply to Responses Regarding Responses to Order No. 4**

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TO THE HONORABLE JUDGE O'MALLEY:

**I. SUMMARY**

Protestants support Aqua WSC's request that SOAH issue a proposal for decision making its decision on party status a final decision of SOAH as a means of resolving the controlling question of law addressed in Protestants' original motion. This approach, as well as the approach outlined in Protestants' original motion, is consistent with the District's order referring the matter to SOAH and is consistent with the District's role as the ultimate administrative authority on questions of law.

**II. ARGUMENT**

Protestants seek resolution of the legal question identified in their original motion in order to avoid duplicative costs and time, thereby furthering the goal of administrative efficiency. Thus, Protestants support Aqua WSC's request that SOAH issue a proposal for decision making its ruling on party status a final determination of SOAH. Procedurally, this course of action resolves existing uncertainty in the matter. Notably,

the District's General Manager concurs that this course of action is fully within the authority of the ALJ.

The response submitted by End Op, L.P. incorrectly presumes that the ALJ's decision on party status is final and unreviewable by the District. This is simply untrue. Ultimately, the District maintains broad authority to change an order issued by the ALJ if the District disagrees with the legal conclusions embodied in that order.<sup>1</sup> The only question is *when* the District will review the ALJ's rulings on party status embodied in Order No. 3, not *if* such a review will occur. Protestants prefer to avoid a situation where such review does not occur until after the entire hearing process has concluded.

Protestants disagree with the implication by the District's General Manager, and End Op, that allowing District review of this matter at this time somehow is contrary to the District's Order referring the matter to SOAH. The District referred the question of party status to SOAH in order to allow a more complete development of the facts related to Protestants' requests for party status. That factual record has now been assembled, and the issuance of a proposal for decision would clarify the ALJ's *factual* findings relative to the matter in order to allow the District to most timely fulfill its role as the final administrative authority on questions of law.

End Op's complaint that referral of this matter to the District will improperly subject the decision to "the glare of local influence"<sup>2</sup> both ignores that the District will review the ALJ's decision either now or later, and dismisses the importance of local control in

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<sup>1</sup> Tex. Gov't Code § 2001.058(c)(1).

<sup>2</sup> End Op Response at p. 2.

Texas' regulatory scheme for groundwater. As noted by the Texas Supreme court, "the Texas Legislature has concluded that *local* groundwater conservation districts are the state's preferred method of groundwater management."<sup>3</sup> In the words of former Lieutenant Governor Bob Bullock, "These districts embody a central premise of [Senate Bill 1 of the 75<sup>th</sup> Legislature] -local control - and represent the idea that those closest to the resource are those most capable of managing it."<sup>4</sup> It is only appropriate that the District decide in the first instance whether it wishes to adopt a legal interpretation that imposes limits on standing that run counter to this central premise of Texas groundwater law. If End Op takes issue with this local authority, it is free to pursue that complaint with the Texas Legislature.

### III. CONCLUSION & PRAYER

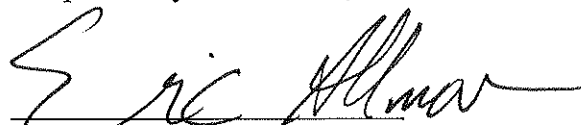
For the reasons set forth above, Protestants maintain their request previously set forth in Protestants' original Motion, and, alternatively, support Aqua WSC's request that SOAH issue a PFD making its decision on party status a final decision of SOAH.

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<sup>3</sup> *Sipriano v. Great Spring Waters of Am., Inc.*, 1 S.W.3d 75, 81 (Tex. 1999)(internal quotation marks omitted and emphasis added).

<sup>4</sup> Martin Hubert & Bob Bullock, *Senate Bill 1, the First Big and Bold Step Toward Meeting Texas's Future Water Needs*, 30 Tex. Tech L. Rev. 53, 65-66 (1999).

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

By my signature, below, I certify that on the 14<sup>th</sup> day of October, 2013, a true and correct copy of the foregoing document set out above was served upon those on the following service list facsimile transmission and/or deposit in the U.S. mail.

  
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