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May 8, 2013

# Lost Pines Groundwater Conservation District

c/o Joe Cooper, General Manager

908 Loop 230, PO Box 1027

Smithville, Texas 78957

Re: Request by Environmental Stewardship for party status in contested case hearing with regard to the Applications of End Op, L.P. for Well Registration, Operating Permits and Transfer Permits for 14 wells to be located in Bastrop County and Lee County.

Mr. Cooper:

Environmental Stewardship requests party status in any contested case hearing with regard to the above-referenced applications submitted by End Op, L.P. Environmental Stewardship is a non-profit corporation. The goals of Environmental Stewardship include seeking the protection, conservation, restoration and enhancement the ecological functions of the Colorado River and its associated groundwater and watershed in order to optimize water available for beneficial human and environmental uses throughout the basin.

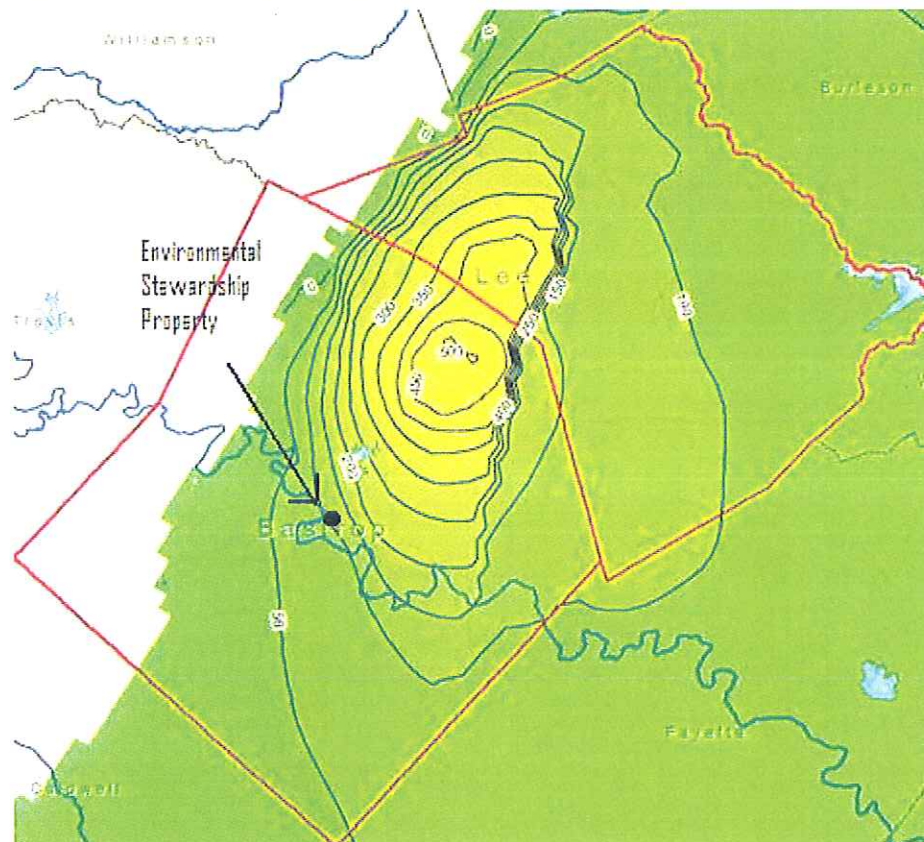
In relation to these applications by End Op, L.P., Environmental Stewardship holds a personal justiciable interest within the District's regulatory authority that is affected by the Board's action on these applications in a manner not common to the general public. Environmental Stewardship is the owner of real property located in Bastrop County.<sup>1</sup> Groundwater that has not been severed from the surface estate by conveyance or reservation is an element of the surface estate.<sup>2</sup> The groundwater beneath Environmental

<sup>1</sup> See Attachment 1, Special Warranty Deed for Unit 4, Block 14, Lot 4-0950 located in Tahitian Village.

<sup>2</sup> *Sun Oil Company v. Whitaker*, 483 S.W.2d 808, 811 (Tex. 1972).

Stewardship's real property has not been severed from the surface estate by either conveyance or reservation. As shown in Figure 1 below, modeling performed for the District indicates that the pumping requested in the End Op applications will lower water levels in the Simsboro Aquifer beneath this property approximately 100 feet. This reduction of groundwater levels beneath Environmental Stewardship's property renders it affected in a manner not common to the general public.

Environmental Stewardship's real property is also within only a few hundred feet of the Colorado River and the Lost Pines Recreational Trails along the River. This proximity enhances Environmental Stewardship's use and enjoyment of its real property. By lowering water levels in the underlying aquifers, the proposed applications will potentially adversely impact the level of flow in the Colorado River and thereby impact Environmental Stewardship's use and enjoyment of its real property. This impact is distinct from any interest held by the general public.



**Figure 1: Projected Drawdown in Simsboro Aquifer beneath Environmental Stewardship Property.**



Environmental Stewardship requests party status in any contested case hearing with regard to End Op, L.P.'s applications because it has not been shown that granting these applications is consistent with sound scientifically-supported groundwater management, nor the District's own rules and policies.

Particularly when considered in light of other applications now pending before the District, the End Op applications will violate the Desired Future Conditions (DFC) currently adopted by the District. The strategy for preservation of the DFC set forth in the General Manager's analysis of the application, whereby the District will reduce permitted withdrawals later after the DFC has been violated, may be well-intended but is entirely unrealistic. Once End Op and other permitted entities have entered into binding contracts for the supply of water it will be extremely difficult for the District to reduce the permitted water as necessary to preserve the DFC. Furthermore, the Texas Legislature has made clear that it is willing to consider legislation that would wholly remove the District's ability to make such reductions in the future. It is unwise for the District to adopt a management strategy that will at best be exceedingly difficult to implement, and relies upon a management tool that the Legislature may remove entirely.

Environmental Stewardship is further concerned that the District's analysis does not fully consider the drawdowns that will result from the proposed applications. While modeling has been performed, the District's General Manager has dismissed much of this modeling with an assumption that the modeling over-estimates the level of drawdown that will occur. There are sound scientific reasons why the model includes certain conservative assumptions and approaches, and the District should not dismiss its own modeling so nonchalantly. Moreover, the District's analysis has not adequately considered impacts of the proposed permits on surface water resources. All available information should be carefully considered in evaluating the anticipated impacts of the applications on surface water resources, even if that information is imperfect. In the absence of information that allows for the accurate evaluation of impacts the applications will have on surface water resources, the District should delay permitting until the

information and tools are available to fully consider these impacts rather than blindly issuing permits and hoping for the best. To wave a hand and say that water from the Highland Lakes will cure any adverse impacts upon the Colorado River, as the District's current analysis does, both ignores the many other valuable surface water resources in the area and reflects avoidance of the issue more than any analysis of the issue.

Environmental Stewardship believes that a contested case hearing with regard to these applications will allow the District to develop a more robust understanding of the facts involved, which will enable the District to make a more informed decision on the application. Accordingly, Environmental Stewardship requests party status in any contested case hearing with respect to the above-referenced applications of End Op, L.P. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Eric Allmon". The signature is fluid and cursive, with the first name "Eric" and last name "Allmon" clearly distinguishable.

Eric Allmon

Counsel for Environmental Stewardship

# ATTACHMENT 1





DEED  
200916086  
1 PG

**SPECIAL WARRANTY DEED**

THE STATE OF TEXAS \*

KNOW ALL MEN BY THESE PRESENTS:

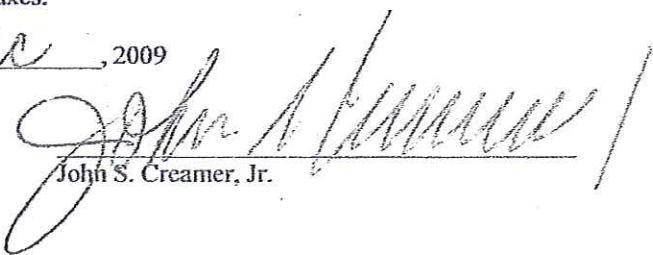
COUNTY OF BASTROP \*

THAT I, John S. Creamer, Jr., in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration to the undersigned paid by the grantees herein named, the receipt of which is hereby acknowledged, have **GRANTED, SOLD and CONVEYED**, and by these presents do **GRANT, SELL and CONVEY** unto Environmental Stewardship, a non-profit 501(C) (3) organization, all of the following described real property in Bastrop County, Texas, to wit:

UNIT 4, Block 14, Lot 4-0950 located in TAHITIAN VILLAGE, a subdivision in Bastrop County, Texas, according to the map or plat thereof, recorded in the Plat Records of Bastrop County, Texas.

**TO HAVE AND TO HOLD** the above described premises, together with all and singular the Rights and appurtenances thereto in anywise belonging, unto the said Grantees, their heirs and Assigns forever; and we do hereby bind ourselves, our heirs, executors and administrators to **WARRANT and FOREVER DEFEND** all and singular the said premises unto the said grantees, their heirs and assigns, against every person whomsoever lawfully claiming or to claim the same of any part thereof, by through or under us/me, but not otherwise. This conveyance is made subject to any unpaid taxes, assessments or fees, and any lien created by such unpaid taxes, assessments or fees, in behalf of any governmental entity or property owners association, and Grantor makes no warranties as to the status of such fees and taxes.

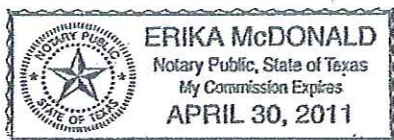
EXECUTED this 21<sup>st</sup> day of Dec, 2009

  
John S. Creamer, Jr.

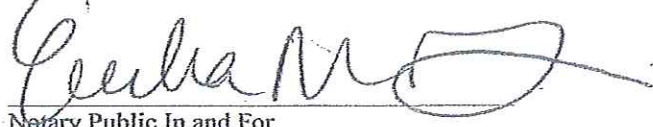
THE STATE OF Texas

COUNTY OF Bastrop

ACKNOWLEDGED before me on this the 21<sup>st</sup> day of Dec, 2009  
By John S. Creamer, Jr.



GRANTEE:  
Environmental Stewardship  
P.O. Box 1423  
Bastrop, Texas 78602

  
Notary Public In and For  
The State of:  
Printed Name:  
Commission Expires:

**FILED AND RECORDED**  
**OFFICIAL PUBLIC RECORDS**

*Rose Pietsch*

December 30, 2009 01:33:38 PM  
PAULAB FEE: \$16.00 BOOK:1964 PAGE:233-233  
ROSE PIETSCH, County Clerk  
Bastrop, Texas  
200916086

DEED