

APPLICATIONS OF END OP, L.P. FOR	§	
OPERATING PERMITS AND TRANSFER	§	BEFORE THE LOST PINES
PERMITS	§	GROUNDWATER CONSERVATION
	§	DISTRICT

**END OP, L.P.'S RESPONSE TO ENVIRONMENTAL STEWARDSHIP'S
IMPROPER AND UNTIMELY REQUEST FOR PARTY STATUS IN
ANY CONTESTED CASE HEARING**

End Op, L.P. ("End Op") files this Response to Environmental Stewardship's ("ES") Improper and Untimely Request for Party Status in Any Contested Case Hearing on End Op's fourteen (14) pending applications ("Applications"), and respectfully shows the following:

On May 8, 2013, ES filed a request to be designated as a party in any contested case hearing held on End Op's applications. ES's request should be denied because it was not proper or timely, and even if it was proper and timely, ES does not have standing to request or participate in a contested case hearing as set forth below.

I. ES's Improper and Untimely Request for Party Status Should Be Denied.

ES's May 8, 2013 request for party status was not proper or timely, does not comply with the Lost Pines Groundwater District's ("District") Rules, and should not be considered - except to be denied. Because it fails on its face to comply with the requirements for seeking party status, the General Manager should dispose of the request administratively by advising ES that its request is improper, not timely and will not be considered further. There is no need for Board action on the request, other than possibly an information item to the Board that the District received an improper, untimely, noncompliant request for party status. If Board action is necessary, e.g., to consider an appeal by ES of the General Manager's administrative determination that the request for party status was improper and not filed timely, then the Board should consider ES's request/appeal at the May 15, 2013 preliminary hearing the Board

previously scheduled.¹ The Board, thereafter, should deny ES's improper and untimely request for the following reasons:

A. ES's Request Was Not Proper or Timely.

If the District receives a timely request for a contested case hearing, Rule 14.3(E) permits the District to schedule a preliminary hearing at which the Board may designate the parties in the contested case hearing. ES is attempting to be designated as a party even though it did not file a timely request for a contested case hearing. To be designated as a party to a contested case hearing, that person must have filed a timely request for a contested case hearing. In other words, in a groundwater district proceeding, a person cannot be designated as a party in a contested case hearing unless that person filed a timely request for a contested case.

This is true even for a groundwater district proceeding conducted by the State Office of Hearing Examiners ("SOAH").² The District's Rules, Chapter 36 of the Texas Water Code, certain subchapters of the Administrative Procedure Act, and SOAH's procedural rules (Chapter 155 of the Texas Administrative Code) govern a groundwater district proceeding conducted by SOAH, none of which permit a person who did not file a timely request for a contested case hearing to be designated as a party in the contested case proceeding conducted by SOAH. The District's Rules and Chapter 36 do not permit a groundwater district to designate as a party a person who has not requested a contested case hearing. *See generally* Rules 14.3, 14.4 and Chapter 36 of the Texas Water Code. Sections 36.416 and 36.418 of the Texas Water Code expressly state that the Administrative Procedure Act, Chapter 2001 of the Texas Government Code (the "APA"), does not govern a proceeding regarding a permit from a groundwater district

¹ The Board previously scheduled a preliminary hearing on May 15, 2013, to address Aqua Water Supply Corporation's ("Aqua") timely hearing request on End Op's Applications and Aqua's untimely hearing requests on Forestar (USA) Real Estate Group, Inc. and Lower Colorado River Authority ("LCRA") applications.

² End Op requested that the District contract with SOAH to conduct the contested case hearing request that was filed timely by Aqua.

unless a groundwater district contracts with SOAH to conduct a hearing³ and if so, only Subchapters C, D, and F of the APA would apply. TEX. WATER CODE ANN. §§ 36.418. Subchapters C, D, and F of the APA do not permit a groundwater district to designate as a party a person who has not filed a timely request for a contested case hearing.

SOAH's rules do not permit a groundwater district or an Administrative Law Judge ("ALJ") in a SOAH proceeding to designate a person who has not filed a timely request for a contested as a party in a SOAH proceeding. In fact, although SOAH proceedings are open to the public, members of the public are only allowed to make public comment at the hearing if public comment is authorized by statute and the comment addresses matters pertinent to the issues in the case. TEX. ADMIN. CODE § 155.409(c). Public comment is not authorized by statute in this case as public comment on End Op's applications was open and then officially closed at the District's Board Meeting on April 18, 2013.

Thus, the only proper mechanism by which ES, or any other entity or person, could be designated as a party in any contested case hearing is if it filed a timely request for a contested case hearing. Pursuant to Rule 14.3(D), the deadline for filing a request for a contested case hearing on End Op's Applications was no later than five days before the date of the Board meeting at which the Applications were "considered." The Board conducted a hearing on and considered End Op's Applications at its April 18, 2013⁴ Board Meeting.⁵ See Exhibit "A,"

³ Section 36.418 contemplates a few other exceptions in which the APA would apply; however, those exceptions do not apply here.

⁴ The Board originally scheduled and noticed a public hearing on End Op's Applications on April 17, 2013. At the April 17, 2013 Board Meeting, the Board continued the public hearing on End Op's Applications to April 18, 2013.

⁵ On April 18, 2013, the Board conducted a public hearing on End Op's Applications. At the conclusion of the public comment on the Applications, Mr. Talbot, Board President, officially closed the public hearing on End Op's Applications. Counsel for End Op then presented End Op's Applications and took questions from the Board during which time Aqua's request for a contested case hearing on End Op's Applications was acknowledged. The Board then went into Executive Session. When it returned, it considered End Op's Applications, decided a preliminary hearing on Aqua's request for a contested case hearing was necessary, and set the preliminary hearing for May 15, 2013.

copies of the agendas for the April 17 and April 18, 2013 Board Meetings. April 13, 2013 is five days prior to April 18, 2013. ES did not file a request for party status until May 8, 2013. Because ES's filing on May 8, 2013, was almost a month after the April 13, 2013 filing deadline established under the District's own rules, ES's request was not timely and should be denied.

Even if the Rules and statutes permitted the District to designate ES as a party despite failing to file a timely request for a contested case hearing, the deadline in Rule 14.3(D) (April 13, 2013 here) would still apply. Because ES failed to make a proper or timely request, ES's request should be denied.

B. ES had notice of End Op's Applications and an Opportunity To Request Party Status Timely.

In 2007, End Op filed its Applications to permit fourteen wells authorizing the drilling, production, transport and aggregation of the wells. Pursuant to the District's Rules and Chapter 36 of the Texas Water Code, the District processed End Op's Applications following the lifting of the District's moratorium on new wells and declared them administratively complete. See **Exhibit "B."** The District, acting through its General Manager, then directed End Op to mail and publish notice of both the Applications and the District's plans to conduct a hearing and consider End Op's Applications on April 17, 2013. End Op published and mailed the notice as prescribed by the District's General Manager and its Rules at least twenty (20) days prior to the April 17, 2013 hearing date. Copies of End Op's proof of mailed notice and the publisher's affidavits evidencing publication of the notice in two separate newspapers, the *Bastrop Advertiser* and *Giddings Times & News* are attached as **Exhibit "C."** Additionally, the District properly posted its notice of the Hearing and Meeting on April 17, 2013. See **Exhibit "D."** When the District published its agenda for the April 17th Board Meeting, the agenda stated that

the Board planned to continue the hearing on End Op's Applications to April 18, 2013. See Ex. A.⁶

On April 17, 2013, at the duly noticed location and time, the Board opened the hearing on End Op's Applications and then immediately continued the hearing including the public comment to April 18, 2013. On April 18, 2013, at the subsequently duly noticed location and time, the public comment on End Op's Applications was conducted and closed. After the Board heard statements from End Op's counsel and asked questions of End Op's counsel and hydrologists, the Board went into executive session. When it returned, the Board considered End Op's Applications as a posted agenda item for "consideration and possible action" (Item No. 3 on the April 18th Agenda in Ex. A), including Aqua's timely filed request for a contested case hearing on End Op's Applications, and set a preliminary hearing on Aqua's request for May 15, 2013. Therefore, not only was public comment taken at the April 18th hearing, but the Board further considered and acted on End Op's Applications when it heard statements from End Op's counsel, asked questions regarding same, and set a preliminary hearing to consider Aqua's request. Accordingly, Rule 14.3(D) applied. Rule 14.3(D) states in plain, unambiguous language that:

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.* (emphasis added).

The District's designation of Item No. 3 on the April 18th Agenda ("Consideration and possible action on Applications of End Op, L.P. for Operating Permits and Transfer Permits for 14 wells to be located in Bastrop and Lee Counties..."), establishes that the April 18, 2013 Board

⁶ The District moved the hearing on End Op's Applications to April 18, 2013 in response to requests from the citizens of Lee and Bastrop County that the venue in the District's notice, Giddings City Hall, was not large enough to accommodate all citizens seeking to provide public comment. In response, the District continued the hearing scheduled originally for April 17th to April 18th and changed the location of the hearing on April 18th to the American Legion Hall in Giddings.

Meeting was the meeting where End Op's Applications for operating and transfer permits were "considered" first in a public hearing and presentation by End Op and then as a Board agenda item. Because the Rule does not contemplate nor require final Board action and even giving Rule 14.3(D) the broadest reading and most favorable interpretation possible, the facts clearly demonstrate that ES's window to request a contested case hearing or request to participate in a contested case hearing shut five (5) days prior to April 18, 2013, or on April 13, 2013. Any request, therefore, for a contested case hearing or to participate in a requested case hearing, submitted to the Board after April 13, 2013 must be deemed untimely per Rule 14.3(D). Because ES had notice and ample time to request a contested case hearing or party status and failed to do so by the deadline, ES's request is untimely and should be denied.

C. Granting ES's noncompliant, untimely, improper party status request would harm and prejudice End Op.

Granting ES's untimely party status request in direct contravention of the requirements of the District's Rules and the Texas Water Code would harm and prejudice End Op in multiple ways, including the following:

- 1) Granting ES's untimely party status request would render Rule 14.3(D), to which End Op has relied, a nullity thereby compromising End Op's due process rights;
- 2) It would add considerable additional delay to the delay already experienced by End Op since filing its Applications;
- 3) It would create an absurd loophole precedent that would allow a continuous flow of new requests for party status to be filed even after a contested case hearing had commenced in violation of Chapter 36 of the Texas Water Code and the District's Rules; and
- 4) It would add substantial expense to End Op to undergo a contested case hearing with parties who did not file requests.

II. ES Does Not Have Standing On its Own or as an Association.

If the District determines that ES's request for party status was timely and proper, the District should refer the issue of whether ES has standing to SOAH. The District or SOAH

must still deny ES's request because it does not have standing to request or participate in a contested case hearing.

A. ES does not have standing on its own.

Even if ES had filed a proper and timely request, in order to participate in a contested case hearing on End Op's Applications, ES must meet the standing test set out in section 36.415(b)(2) of the Texas Water Code, as implemented by the District, which incorporates the constitutional principles of standing applied by Texas courts. In a proceeding regarding a permit from a groundwater district, a district is required to:

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.

TEX. WATER CODE ANN. § 36.415(b)(2).

In the *City of Waco v. Tex. Comm'n on Env't. Quality*, 346 S.W.3d 781, 791-92, 802 (Tex. App.—Austin 2011, pet. filed), the appellate court evaluated the reference to a "personal justiciable interest not common to members of the general public" and held that to establish standing under these principles, the protestant had to establish:

- (1) an "injury in fact" from the issuance of the permit as proposed—an invasion of a "legally protected interest" that is (a) "concrete and particularized" and (b) "actual or imminent, not conjectural or hypothetical";
- (2) the injury must be "fairly traceable" to the issuance of the permit as proposed, as opposed to the independent actions of third parties or other alternative causes unrelated to the permit; and
- (3) it must be likely, and not merely speculative, that the injury will be redressed by a favorable decision on its complaints regarding the proposed permit (i.e., refusing to grant the permit or imposing additional conditions).

The District must implement its rules according to this standard for determining standing in a permit proceeding. *Id.* § 36.415(b)(2); *cf. Guitar Holding Co. v. Hudspeth County*

Underground Water Conserv. Dist. No. 1, 263 S.W.3d 910, 918 (Tex. 2008) (District has only the authority granted in chapter 36). Thus, only persons with a personal justiciable interest within the District's regulatory authority and affected by the permit application who have an injury in fact that is fairly traceable and not merely speculative may participate in a groundwater permit hearing.

ES contends its justiciable interest stems from being an owner of real property located in Bastrop County. ES does not have any wells nor does it have any plans to file applications to permit wells. In fact, because ES's property is a mere 0.242 acres and given the District's spacing requirement, ES is precluded from drilling most exempt and any non-exempt wells. See Rules 3.1, 8.2. ES, therefore, has a speculative interest that is not concrete or particularized or actual or imminent. Further, and to the extent ES could drill a well, ES's interest is common to members of the public as any citizen owning land in Lee or Bastrop County could allege that he/she may file permit applications at some unspecified time in the future.

Specifically, ES contends modeling performed for the District indicates that the pumping requested in End Op's Applications will lower water in the Simsboro Aquifer beneath ES's water approximately 100 feet and this drawdown causes ES to be affected in a manner not common to the general public. ES's conclusions regarding the potential draw down levels are misguided. First, although the GAM indicates that drawdown could be 100 feet in the Simsboro, as the District's hydrologist concedes, the model or GAM over-estimates draw down impacts. Second, End Op's hydrologists also agree that the GAM over-estimates draw down levels and does not accurately reflect the hydraulic properties of the aquifer.

ES also contends its property is within a few hundred feet of the Colorado River and the Lost Pines Recreational Trails along the River, both of which allegedly enhance its use and enjoyment of its real property. If the water levels in any underlying aquifer are lowered by End

Op's Applications, ES contends that the water flow of the Colorado River will be impacted thereby impacting ES's use and enjoyment of its real property. ES's conclusions regarding the potential impact of the flow of the Colorado River are misguided.

First, to the extent any change in level of flow in the Colorado River is based upon estimated draw down levels from the GAM, the conclusions regarding the level of flow are flawed as the GAM should not be used to determine river flows. One reason the GAM should not be used to monitor the level of flow in the Colorado River is because the Colorado River flows through the Alluvium and the Alluvium is not in the GAM. Second, the level of flow of the Colorado River is only potentially impacted by the Simsboro outcrop and ES's property is located about 3.5 miles southeast of the nearest mapped outcrop of the Simsboro with Aqua owning the closest Simsboro wells. See Exhibit E. Third, pursuant to Lower Colorado River Authority's recently approved Water Management Plan, the Colorado River will not experience impact in the level of flow in the river as LCRA's management plan expressly requires LCRA to prevent impact in the level of flow in the river. See Exhibit F.

B. Standing as an Association is Not Available and Even if it were, ES has not plead and does not have standing as an association.

Unable to establish standing on its own, ES can only attempt to establish associational standing on behalf of its members. ES has not plead associational standing; therefore, it is not entitled to establish standing through a member of its association. Even if ES had plead associational standing, section 36.415 of the Texas Water Code, stands as a major impediment, as it does not contemplate associational standing. In fact, because there is no reference to associational standing in section 36.415, the logical conclusion is that the legislature did not intend for associations to have standing in chapter 36 permit proceedings. *Tovar v. State*, 949 S.W.2d 370, 374 (Tex. App.—San Antonio 1997) *aff'd*, 978 S.W.2d 584 (Tex. Crim. App. 1998)

(legislative intent may be inferred from the absence of a particular provision in a statute); *Green v. Watson*, 860 S.W.2d 238, 244 (Tex. App.—Austin 1993, no writ) (intent can be inferred from the absence or presence of a particular provision in a statute). ES, therefore, cannot rely on associational standing on behalf of its members to establish a justiciable interest.

Even if associational standing is available, ES cannot meet the requirements to obtain it. In Texas “an association has standing to sue on behalf of its members when ‘(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’” *Tex. Assoc. of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993) (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 1, 9 (1988)); *S. Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 308 (Tex. 2007). ES has the burden to present evidence establishing each of these elements. *See Tex. Assoc. of Bus.*, 852 S.W.2d at 447-48 (noting that “the *Hunt* test requires that TAB’s pleadings and the rest of the record demonstrate” that TAB satisfy each of the three prongs). ES cannot establish these standards.

III. Request for Relief

End Op respectfully requests that the District provide the following relief:

- (1) Declare ES’s May 8, 2013, request for party status as improper and/or untimely;
- (2) Deny ES’s request for party status either because it was improper, untimely or because ES lacks standing;
- (3) Upon final consideration of End Op’s Applications, grant permits as recommended by the District’s General Manager; and
- (4) Such other and further relief as the District may find appropriate and to which End Op is entitled.

Respectfully submitted,

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P

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rjohnson@mcginnislaw.com
600 Congress Avenue, Suite 2600
Austin TX 78701
(512) 495-6074
(512) 505-6374 FAX

By: Russell S. Johnson (with permission)
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ATTORNEYS FOR END OP L.P.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing "Response to Environmental Stewardship's Improper and Untimely Request for Party Status in Any Contested Case Hearing" was sent, as indicated below, to the Lost Pines Groundwater Conservation District by e-mail and hand delivery, to the attention of its General Manager, Joe Cooper, with a copy faxed and/or emailed to the District's General Counsel, Robin Melvin, Counsel for Environmental Stewardship, Eric Allmon, Counsel for Aqua Water Supply Corporation, Mike Gershon, Counsel for Forestar (USA) Real Estate Group, Inc., Edmond R. McCarthy, Jr., and Counsel for the Lower Colorado River Authority, Greg Graml, at the faxes and/or emails below, on May 14, 2013.

Lost Pines Groundwater Conservation District
Attn: Mr. Joe Cooper, General Manager
908 NE Loop 230
Post Office Box 1027
Smithville, Texas 78957
Telephone: (512)360-5088
E-mail: lpgcd@lostpineswater.org

Via E-Mail and Hand Delivery

Eric M. Allmon, Environmental Stewardship
c/o Lowerre, Frederick, Perales, Allmon & Rockwell
707 Rio Grande St Ste 200
Austin, TX 78701
Telephone: 512-469-6000
Fax: 512-482-9346

Via Facsimile

Ms. Robin Melvin, General Counsel, LPGCD
Robin Melvin
Graves Dougherty Hearon & Moody
401 Congress Avenue, Suite 2200
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Telephone: 512-480-5688
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E-mail: rmelvin@gdhm.com

Via Fax and E-Mail

Mr. Michael A. Gershon, Counsel, Aqua WSC
Ms. Kristen Olson Fancher
c/o Lloyd Gosselink
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Fax: (512) 322-5872
E-mail: mgershon@lglawfirm.com

Via Fax and E-Mail

Mr. Edmond R. McCarthy, Jr. Counsel
Forestar (USA) Real Estate Group, Inc.

Via Fax and E-Mail

711 West 7th Street
Austin, Texas 78701
Telephone: 512-225-5606
Fax: 512-225-5565
E-mail: emccarthy@jacksonsjoberg.com

Mr. Greg Graml, Counsel, Lower Colorado River Authority
Ms. Lyn Clancy, Counsel, Lower Colorado River Authority
c/o Office of General Counsel
Po Box 220
Mailstop H 424
Austin, TX 78767
Telephone: 512-473-3378
Fax: 512-473-4010
E-mail: greg.graml@lcra.org
Lyn.clancy@lcra.org

Via Fax and E-mail

By: 

Stacey V. Reese

Exhibit "A"

The Agendas for the April 17th and April 18th Board Meetings

APR 12 2013 10:15AM

APR 12 2013 11:11

LOST PINES GROUNDWATER CONSERVATION DISTRICT

Board Meeting
Wednesday, April 17, 2013 - 7:00 p.m.
Giddings City Hall
118 East Richmond Street
Giddings, Texas 78942

AGENDA

The subjects to be discussed or considered, or upon which any formal actions may be taken, are as listed below. Items may or may not be taken in the same order as shown on the meeting notice.

- 1) Call to Order - President Michael Talbot - Public Hearings
- 2) Consideration and action on designation of the American Legion Hall, 1502 S. Highway 77, Giddings, Texas 78942, as an additional location for public hearings on applications for permits and permit amendments under Texas Water Code § 36.403(o).
- 3) Public hearing on Applications of End Op. L.P. for Operating Permits and Transfer Permits for 14 wells to be located in Bastrop and Lee Counties seeking authorization to withdraw an aggregate of 56,000 acre-feet per year from the Simsboro Aquifer to be used for public water supply purposes in Travis and Williamson County. Pursuant to Texas Water Code § 36.409, the President, as presiding officer of the hearing, will continue this public hearing to:

Thursday, April 18, 2013 - 6:00 p.m.
American Legion Hall
1502 S. Highway 77
Giddings, Texas 78942

- The Board will hear all public comments at the hearing on April 18, 2013. Public comments will be limited to 3 minutes per person.
- 4) Public hearing on Applications of Manville Water Supply Corporation for Operating Permits and Transfer Permits for two wells to be located in Lee County seeking authorization to withdraw an aggregate of 3,226 acre-feet of water per year from the Simsboro aquifer to be used for public water supply purposes within Manville Water Supply Corporation's certificated service area. Public comments will be limited to 3 minutes per person.
 - 5) Call to Order - President Michael Talbot - Regular Meeting
 - 6) Welcome and Introductions.
 - 7) Public Comments - limit 3 minutes per person.
 - 8) Review and approval of the minutes of the March 20, 2013 regular board meeting - President Michael Talbot.
 - 9) Consideration and possible action on Applications of Forester (USA) Real Estate Group, Inc. for Operating Permits and Transfer Permits for 10 wells in Lee County seeking authorization to withdraw an aggregate of 45,000 acre-feet per year from the Simsboro Aquifer to be used for public water supply purposes within Bastrop, Hays, Lee, Travis and Williamson Counties. The Board may recess into a closed execution session for consultation with its attorney under Texas Government Code § 551.072.
 - 10) Consideration and possible action on Applications of Lower Colorado River Authority for Operating Permits for five wells to be located in Bastrop County seeking authorization to withdraw an aggregate of 10,000 acre-feet per year from the Simsboro Aquifer to be used for industrial purposes in the LCRA Lake Bastrop Natural Area in Bastrop County. The Board may recess into a closed execution session for consultation with its attorney under Texas Government Code § 551.072.
 - 11) Consideration and possible action on Applications of Manville Water Supply Corporation for Operating Permits and Transfer Permits for two wells to be located in Lee County seeking authorization to withdraw an aggregate of 3,226 acre-feet of water per year from the Simsboro aquifer to be used for public water supply purposes within Manville Water Supply Corporation's certificated service area. The Board may recess into a closed execution session for consultation with its attorney under Texas Government Code § 551.072.

FILED**APR 12 2013**

Rosa Pletuch
 Bastrop County Clerk

10:15am

EXHIBIT**A**

Bastrop Co. CLERK

- 12) Consideration of the financial report and adoption of any budget amendment necessary.
- 13) General Manager's Report. The General Manager may discuss matters concerning new well activity, producer meetings, well site visits, requests of the District, GMAC meetings, Regional meetings, legislative activity or other matters that may affect the District. A memo and well activity list will be distributed to the Board at each regular meeting to describe details. For Board consideration and possible action.
- 14) Discussion of Lost Pines Groundwater Conservation District legislation, related legislation and/or activities occurring that affect or pertain to the District and Groundwater.
- 15) Consideration of conferences, meetings and educational opportunities Board members desire to attend.
- 16) Consideration of agenda calendar and events.

Adjourn.

Date:

April 12, 2013

Peggy Campion
Peggy Campion, Assistant Secretary

Note: The Board may recess into Executive Session to consult with its attorneys regarding any posted matter in which the Board may seek the advice of its attorneys under Government Code § 551.071 or for any action on the agenda for which a closed session is permitted by law, and will reconvene in open session for any appropriate action on any matter considered in Executive Session.

Persons with disabilities who plan to attend the District's agenda and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired; readers, large print or Braille are requested to contact Peggy Campion, Assistant Secretary, at 512-360-5088 at least two (2) work days prior to the agenda, so that appropriate arrangements can be made. Persons who desire the assistance of an interpreter in conjunction with their oral presentation at this district agenda are requested to contact Peggy Campion, Assistant Secretary, at 512-360-5088 at least five (5) days prior to the agenda so that appropriate arrangements can be made.

LOST PINES GROUNDWATER CONSERVATION DISTRICT

Board Meeting
Thursday, April 18, 2013 - 6:00 p.m.
American Legion Hall
1502 S. Highway 77
Giddings, Texas 78942

AGENDA

The subjects to be discussed or considered, or upon which any formal actions may be taken, are as listed below. Items may or may not be taken in the same order as shown on the meeting notice.

- 1) Call to Order - President Michael Talbot
- 2) Public hearing on Applications of End Op, L.P. for Operating Permits and Transfer Permits for 14 wells to be located in Bastrop and Lee Counties seeking authorization to withdraw an aggregate of 56,000 acre-feet per year from the Simsboro Aquifer to be used for public water supply purposes in Travis and Williamson County.
- 3) Consideration and possible action on Applications of End Op, L.P. for Operating Permits and Transfer Permits for 14 wells to be located in Bastrop and Lee Counties seeking authorization to withdraw an aggregate of 56,000 acre-feet per year from the Simsboro Aquifer to be used for public water supply purposes in Travis and Williamson County.

Adjourn.

Date: April 12, 2013

Peggy Campion
Peggy Campion, Assistant Secretary

Note: The Board may recess into Executive Session to consult with its attorneys regarding any posted matter in which the Board may seek the advice of its attorneys under Government Code § 551.071 or for any action on the agenda for which a closed session is permitted by law, and will reconvene in open session for any appropriate action on any matter considered in Executive Session.

Persons with disabilities who plan to attend the District's agenda and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille are requested to contact Peggy Campion, Assistant Secretary, at 512-360-5088 at least two (2) work days prior to the agenda, so that appropriate arrangements can be made. Persons who desire the assistance of an interpreter in conjunction with their oral presentation at this district agenda are requested to contact Peggy Campion, Assistant Secretary, at 512-360-5088 at least five (5) days prior to the agenda so that appropriate arrangements can be made.

FILED

APR 12 2013

Rosa Fleisch
Bastrop County Clerk

11:28 am

Exhibit "B"

Letter from Mr. Joe Cooper to End Op dated March 18, 2013



Lost Pines Groundwater Conservation District
908 NE Loop 230
Post Office Box 1027
Smithville, TX 78957
Tax ID Number 74-2955722

512-360-5088
FAX: 512-360-5448
Email: lpgcd@lostpineswater.org
Web Site: www.lostpineswater.org

Joe Cooper, General Manager

March 18, 2013

Frankie Limmer
Manager
End Op, LP
1010 Provident Lane
Round Rock, Texas 78746-5149

Re: End Op, LP's Applications for Operating and Transfer Permits for Well Nos. 1-14

Dear Mr. Limmer:

The District staff has reviewed End Op, LP's Applications for Operating and Transfer Permits for Well Nos. 1-14 (the "Applications"), and I hereby give notice under District Rule 14.3.B(2) that the Applications have been declared Administratively Complete for purposes of further processing.

The District Board of Directors will consider the Applications at its meeting on April 17, 2013. Attached is a notice of the Board's consideration of the Applications at that meeting.

Under District Rule 14.3.C(3), the Applicant must, not later than the 20th day before the meeting: (i) provide the notice by regular mail to the Owner and Landowners of property adjoining the Property Line, as shown in the county tax rolls on the date the notice is mailed; (ii) provide notice by regular mail to the Owners of all existing registered and permitted wells within 5,000 feet of the proposed well, as shown in the records of the District on the date the notice is mailed; and (iii) publish the notice once in a newspaper of general circulation in each county within the District. Please provide the District with proof of the mailing and publication of notice no later than April 15, 2013. Proof of publication shall include a publisher's affidavit and tear sheet of the notice.

District Rule 14.3.B(2) provides that, when an application for a permit has been declared Administratively Complete, the General Manager will provide the applicant with a summary of the General Manager's recommendation on the application. If the General Manager recommends that a permit be granted, the summary may include a draft permit.

As General Manager, I will recommend that the Board grant each application under the terms and conditions in the attached draft permits.

Board of Directors

Michael Talbot President, Billy Sherrill Vice-President, Doug Prinz Secretary-Treasurer
Alice Darnell, Ken Daughtry, David Fleming, Keith Hansberger, Travis McPhaul, Michael Simmang Carl Steinbach

EXHIBIT

B



Lost Pines Groundwater Conservation District
908 NE Loop 230
Post Office Box 1027
Smithville, TX 78957
Tax ID Number 74-2955722

512-360-5088
FAX: 512-360-5448
Email: lpgcd@lostpineswater.org
Web Site: www.lostpineswater.org

Joe Cooper, General Manager

Thank you for your attention to this matter, and please do not hesitate to contact me if you have any questions or comments.

Sincerely,

Joe P. Cooper, General Manager

cc: Robin A. Melvin

Board of Directors

Michael Talbot President, Billy Sherrill Vice-President, Doug Prinz Secretary-Treasurer
Alice Darnell, Ken Daughtry, David Fleming, Keith Hansberger, Travis McPhaul, Michael Simmiang Carl Steinbach

Exhibit "C"

Publisher's Affidavit evidencing publication of notice in *The Bastrop Advertiser and Giddings Times & News*

Affidavit of Publisher**STATE OF TEXAS
COUNTY OF BASTROP**

Before me, the undersigned authority, on this day personally appeared CYNDI WRIGHT known to me, who being duly sworn on his oath deposes and says that (s)he is the EDITOR of The Bastrop Advertiser, a newspaper of general circulation, published in said County; this said newspaper has been continuously and regularly published in said County for a period of more than one year; that a copy of the within and foregoing

Lost Pines Groundwater
Public Hearing Case No. _____
Styled End Op. LP applicant

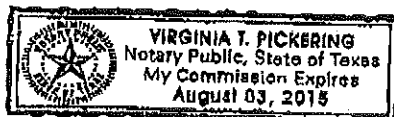
was published in said newspaper 1 successive issues, being on the following dates:

3-28-13
and a newspaper copy is hereto attached.

Signed

Cyndi Wright
Cyndi Wright, Editor

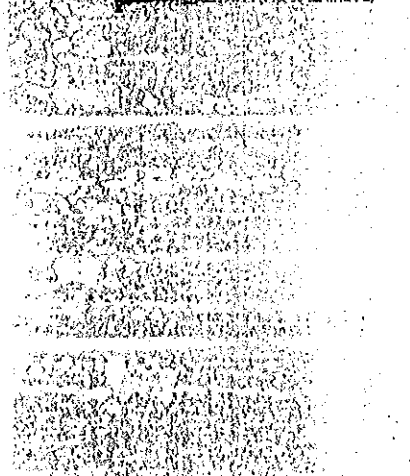
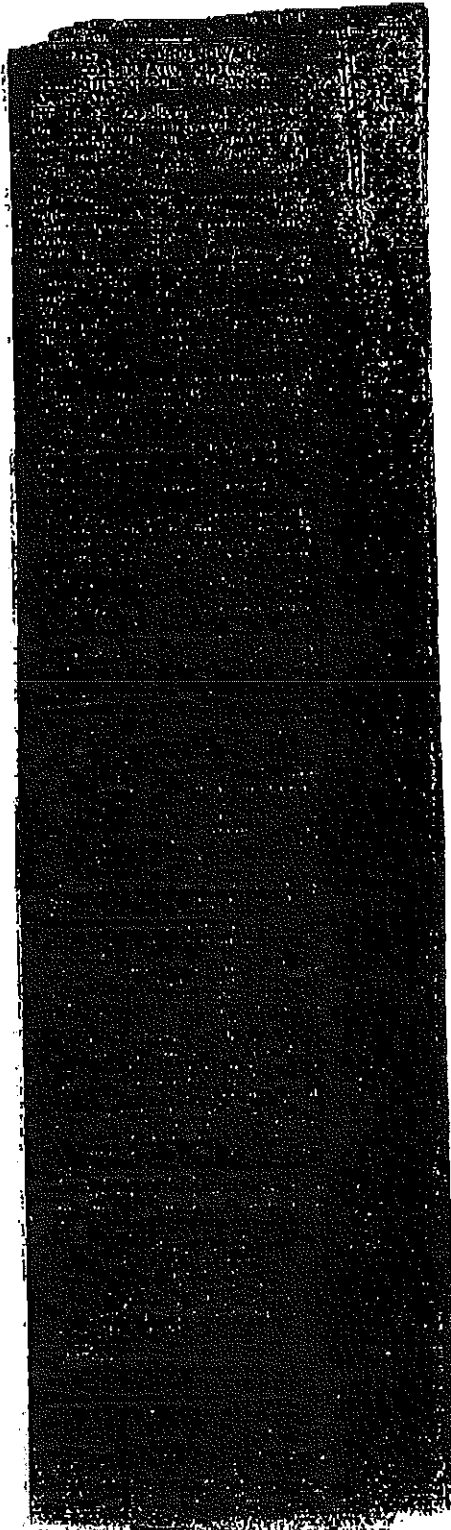
Subscribed and sworn to before me this, the 28th day of March A.D. 2013.

Virginia T. Pickering
Virginia T. Pickering
Notary Public in and for Bastrop County, Texas

Seal

EXHIBIT

C



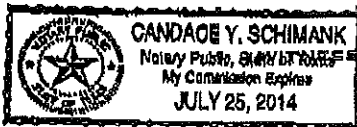
STATE OF TEXAS
COUNTY OF LEE

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED _____

David True, PUBLISHER OF THE GIDDINGS TIMES & NEWS, A WEEKLY NEWSPAPER
PUBLISHED ON THURSDAY OF EACH WEEK AT GIDDINGS, LEE COUNTY, TEXAS WHO BEING BY ME DULY SWORN DECLARED

THAT THE ATTACHED Notice of Public Hearing WAS PUBLISHED 1 TIMES IN SAID NEWSPAPER, THE
DATES OF SAID PUBLICATION BEING AS FOLLOWS:

March 28, 2013
CLIPPING IS A TRUE COPY OF SAID PUBLICATION.



MY HAND AND SEAL THIS

AND THAT THE ATTACHED
David True
EDITOR-PUBLISHER
28 DAY OF March 20 13
Candace Y. Schimank
NOTARY PUBLIC, LEE COUNTY, TEXAS

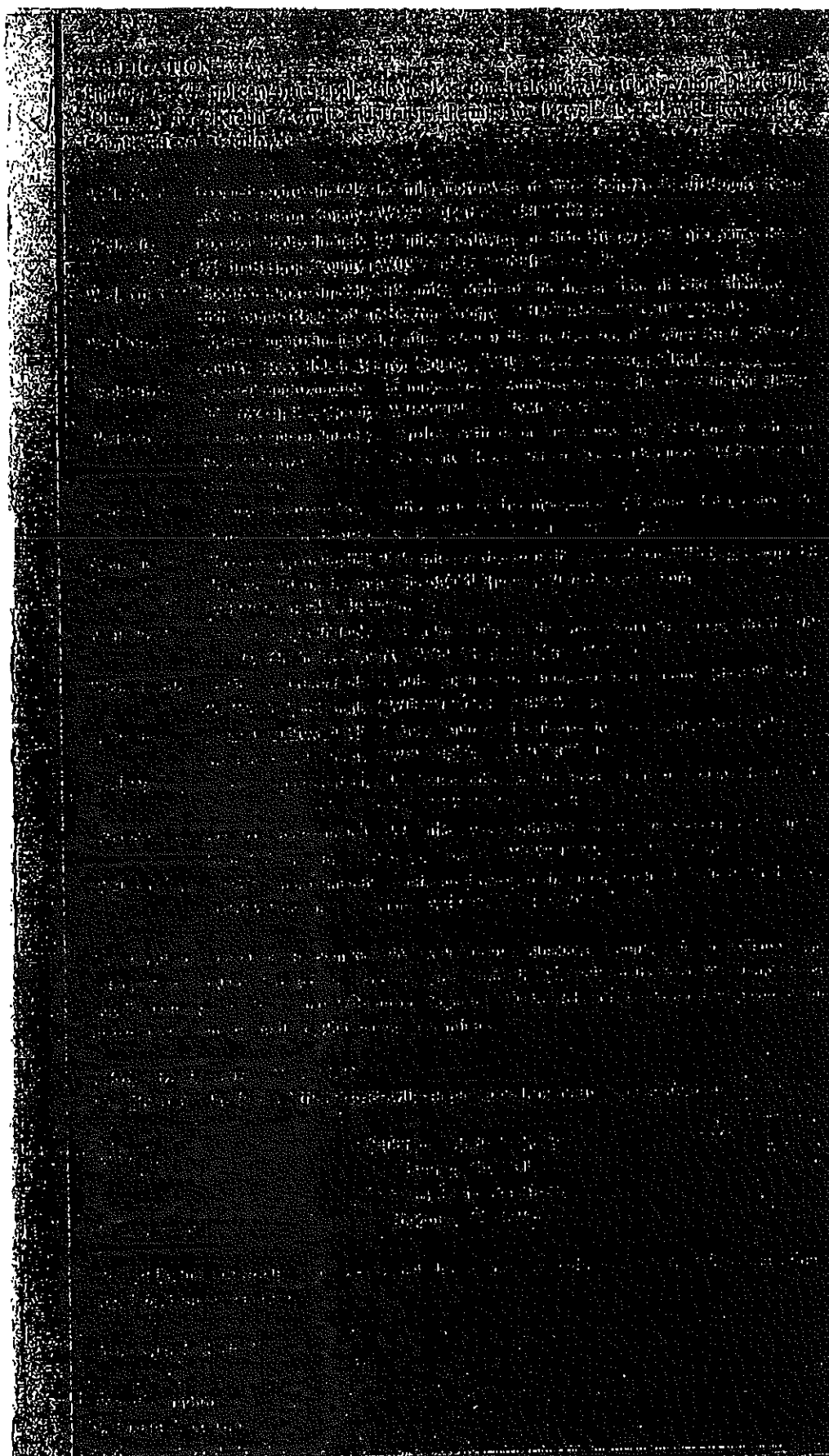


Exhibit "D"

The District's Notice of Hearing on April 17, 2013

**LOST PINES GROUNDWATER CONSERVATION DISTRICT
NOTICE OF PUBLIC HEARING**

APPLICATION

End Op, LP ("Applicant") has applied to the Lost Pines Groundwater Conservation District (the "District") for Operating Permits and Transfer Permits for 14 wells located in Bastrop and Lee Counties, Texas as follows:

- Well No. 1. Located approximately 0.5 miles northwest of State Highway 21 off County Road 359 in Bastrop County (W097°10'50.4" N30°11'03.4")
- Well No. 2. Located approximately 1.9 miles northwest of State Highway 21 off County Road 359 in Bastrop County (W097°11'15.7" N30°11'47.8")
- Well No. 3. Located approximately 1.9 miles north of the intersection of State Highway 21 and County Road 359 in Bastrop County (W097°10'35.7" N30°12'23.0")
- Well No. 4. Located approximately 0.7 miles west of the intersection of County Road 359 and County Road 360 in Bastrop County (W097°12'25.6" N30°13'00.0")
- Well No. 5. Located approximately 4.5 miles west-southwest of the City of Lexington along FM 1624 in Lee County (W097°04'41.2" N30°22'35.1")
- Well No. 6. Located approximately 2.1 miles north of the intersection of US Highway 290 and State Highway 21, east of County Road 160 in Bastrop County (W097°8'41.0" N30°14'36.1")
- Well No. 7. Located approximately 1 mile north of the intersection of County Road 3 and Old Highway 20 in Bastrop County (W097°10'54.0" N30°15'23.2")
- Well No. 8. Located approximately 0.75 miles northeast of the intersection of Dube Lane and US Highway 290, on the north side of Old Highway 20 in Bastrop County (W097°12'04.4" N30°14'56.1")
- Well No. 9. Located approximately 4.2 miles south of the intersection of County Road 309 and FM 696 in Lee County (W097°8'43.8" N30°19'55.3")
- Well No. 10. Located approximately 3 miles south of the intersection of County Road 309 and FM 696 in Lee County (W097°07'03.8" N30°21'15.5")
- Well No. 11. Located approximately 3 miles south of the intersection of County Road 309 and FM 696 in Lee County (W097°08'04.1" N30°20'57.0")
- Well No. 12. Located approximately 0.4 miles north of the intersection of County Road 335 and FM 1624 in Lee County (W097°04'31.6" N30°21'04.3")
- Well No. 13. Located approximately 0.9 miles west-southwest of the intersection of County Road 332 and FM 1624 in Lee County (W097°05'39.7" N30°21'25.0")
- Well No. 14. Located approximately 1 mile northwest of the intersection of County Road 332 and FM 1624 in Lee County (W097°05'32.0" N30°22'21.6")

The Applicant proposes to complete the wells in the Simsboro Aquifer and to withdraw an aggregate of 56,000 acre-feet of water per year from the 14 wells to be used for public water supply purposes in Travis and Williamson Counties. Each well will be designed to pump at an instantaneous rate of 2480 to 3000 gallons per minute.

EXHIBIT**D**

TIME, DATE AND LOCATION

The Board of Directors of the District will conduct a hearing on the Applications at:

7:00 p.m., April 17, 2013
Giddings City Hall
118 East Richmond Street
Giddings, TX 78942

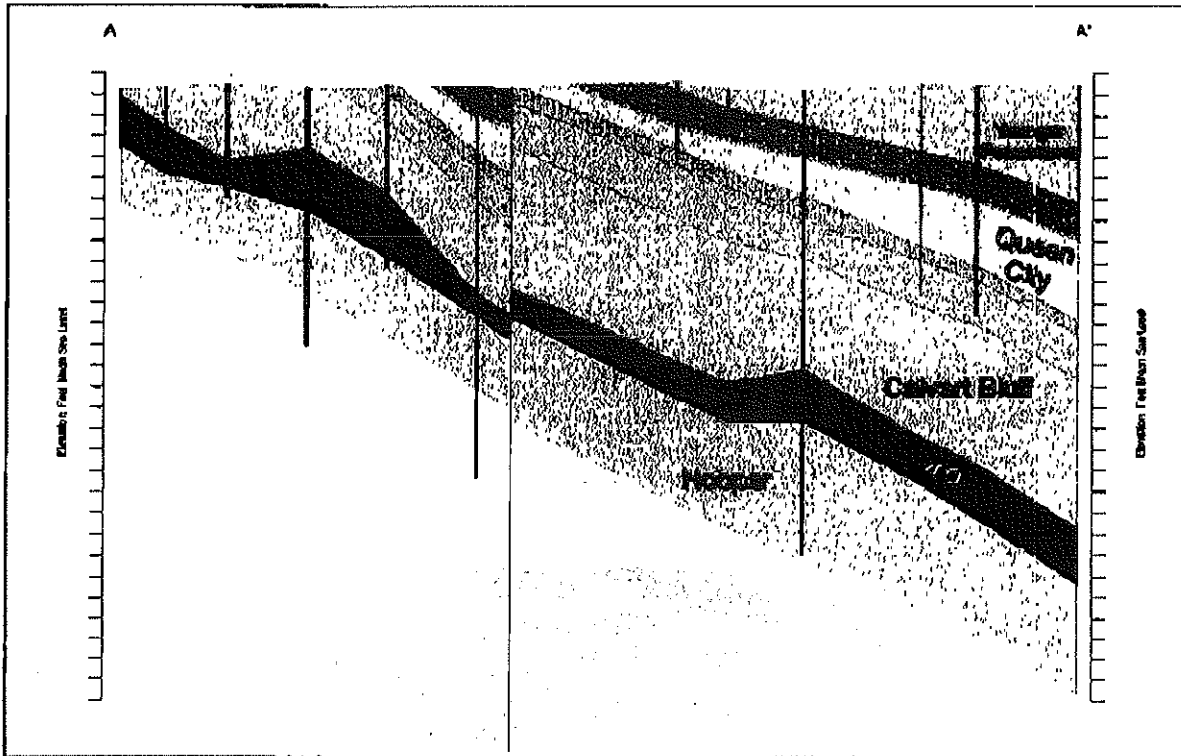
For additional information, please contact the District by calling 512-360-5088 or e-mailing lpgcd@lostpineswater.org.

Date: March 18, 2013

Peggy Campion
Assistant Secretary

Exhibit "E"

Cross-section of formations and property map



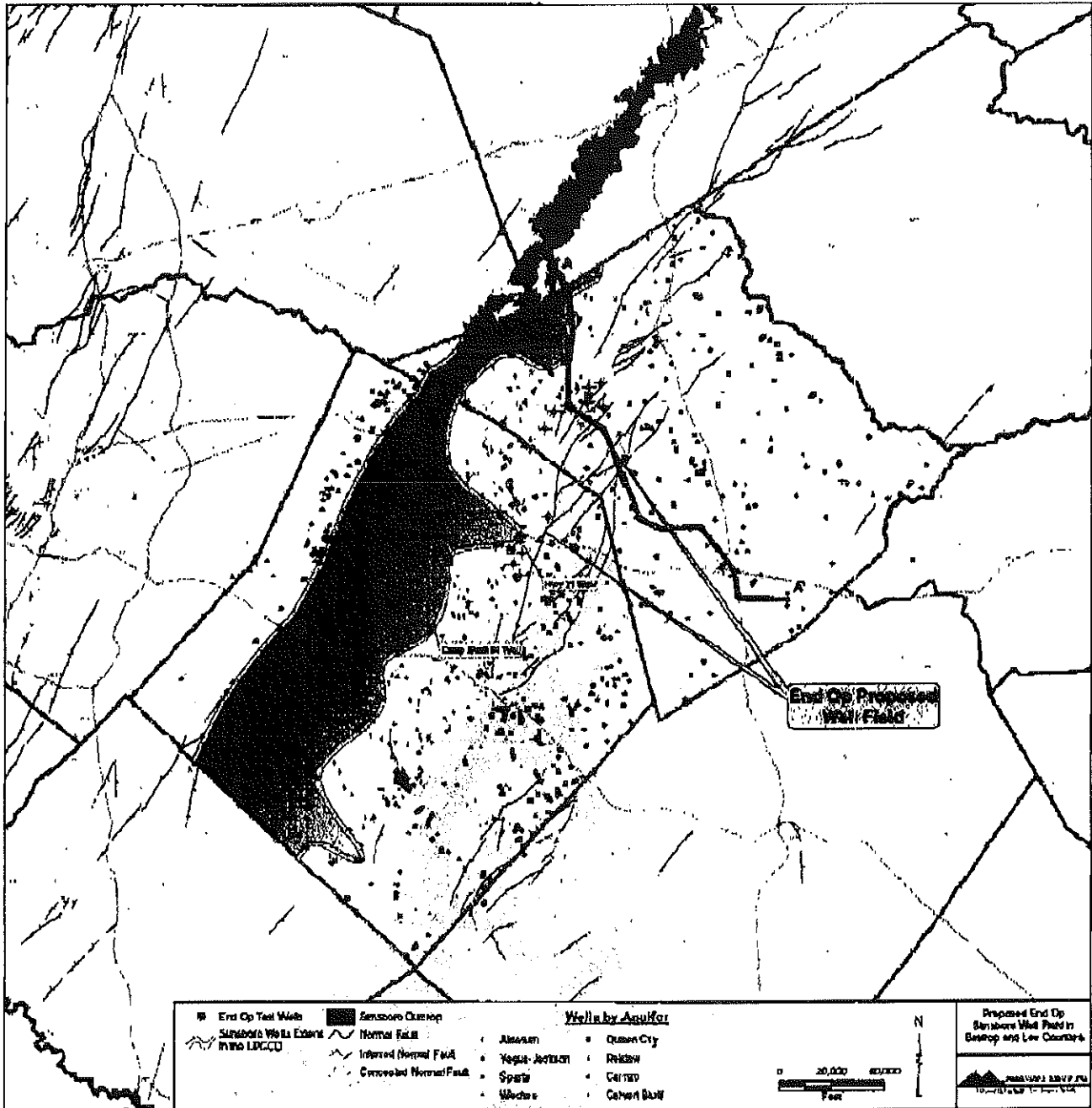


Exhibit "F"

LCRA's Water Management Plan

LCRA updating Water Management Plan for Highland Lakes

Page 1 of 2

LCRA updating Water Management Plan for Highland Lakes

Plan determines how water is allocated during times of drought

On April 15, 2013, the executive director of the Texas Commission on Environmental Quality, recommended approval of LCRA's proposed Water Management Plan for lakes Travis and Buchanan, the lower Colorado River basin's major reservoirs.

The new plan, adopted by LCRA's Board of Directors on Feb. 22, 2012, gives LCRA more flexibility to respond to severe droughts by adding more trigger points during the year to determine how much water is available for agriculture. It also limits the overall amount of water available to agriculture in any year.

LCRA is publishing notice in newspapers throughout the lower Colorado River basin that TCEQ's executive director is recommending approval. Once the notice is published, the public and interested parties have 30 days to comment, protest or ask for a public meeting on the plan. If the plan is not protested, the earliest the TCEQ could approve proposed WMP amendments is likely 60 to 90 days.

TCEQ declared the plan administratively complete on April 19, 2012, and began conducting technical review. Technical review gives TCEQ an opportunity to review the plan and request additional information or clarifications. During that process:

- On May 31, 2012, LCRA submitted an amended plan and technical information to the TCEQ to address questions from the state agency;
- In August 2012, the TCEQ requested more information from LCRA, and LCRA responded on Sept. 10, 2012; and
- In November 2012, TCEQ sent a draft final order to LCRA for review and comment. LCRA commented on the draft final order on March 15, 2013.

The proposed plan, as originally submitted to TCEQ on March 12, 2012, as well as the written public comments and the exhibits, are available here.

WMP Background

To assist with the update submitted to TCEQ in 2012, as in previous updates, LCRA assembled an advisory committee to represent the diverse interests that rely on Highland Lakes water. The advisory committee included representatives from cities, industry, lake area businesses and residents, the environment and farmers. The committee began its work in July 2010 and spent more than a year investigating and discussing how to best balance the demands on the Highland Lakes.

The committee came to a consensus and near consensus on many of the recommended changes in the proposed Water Management Plan. LCRA accepted public comment on the plan and reviewed about 450 written comments before approving it. If the new plan is approved by TCEQ, it will replace the current version of the Water Management Plan the TCEQ approved Jan. 27, 2010.

EMERGENCY DROUGHT RELIEF

Read about emergency drought relief for 2013.

ADVISORY COMMITTEE MEETINGS

June 28 meeting materials:

- Meeting Agenda
- Critique summary from 6/8 meeting
- Impact Summary, Version 2
- WAM Narrative
- Curtailment curves and environmental triggers
- WAM Scenario Results
- WAM Summary Graphs
- WAM Input Sheets
- Curtailment shift mechanism

July 12 meeting materials:

- Meeting Agenda
- Open supply summary
- Curtailment shift mechanism, revised
- Impact Summary, Lake Travis elevation 650
- Impact Summary, Lake Travis elevation 660
- Curtailment curves and environmental triggers
- WAM scenario results
- WAM summary graphs
- WAM input sheets

Informational:

- 6/8/11 Adv. Committee Attendees
- 6/8/11 WMP Meeting Notes

SUBSCRIBE TO WATER MANAGEMENT UPDATE EMAIL

*Email:



View past e-newsletters

- April 17, 2013
- June 1, 2012
- March 12, 2012
- March 2, 2012
- Feb. 22, 2012
- Feb. 16, 2012
- Feb. 13, 2012
- Jan. 24, 2012
- Jan. 17, 2012
- July 13, 2011
- June 29, 2011
- June 9, 2011
- May 25, 2011
- May 12, 2011
- May 2, 2011
- March 30, 2011
- March 1, 2011
- Feb. 25, 2011



LCRA updating Water Management Plan for Highland Lakes

Page 2 of 2


LCRA's Water Management Plan is the only one of its kind in the state. It was required by the 1989 court settlement that determined the water rights for the Highland Lakes. The state approved the first Water Management Plan in 1989. Updates were approved in 1992, 1999 and 2010.

The Water Management Plan governs LCRA's operation of the Highland Lakes to meet the needs of major water users throughout the lower Colorado River basin. Specifically, the Water Management Plan prescribes how to allocate water during water supply shortages. During severe drought, the plan requires the curtailment or cutback of Highland Lakes water for downstream agriculture so that water will be available for the basic needs of cities, businesses and industries. Under the plan, LCRA and its customers are required to take specific actions at designated points, known as "trigger points," as water storage levels drop. The plan also prescribes how LCRA must provide water from the lakes to help meet the environmental needs of the lower Colorado River and Matagorda Bay at these various trigger points.

In 2012, LCRA managed the lakes under an emergency drought relief order approved by the TCEQ. Under that order, which acts as a temporary amendment to the current Water Management Plan, LCRA did not provide any water from the Highland Lakes to most downstream farmers in 2012. LCRA sent 8,696 acre-feet of water from the Highland Lakes to farmers in the Garwood Irrigation operation in 2012. Farmers in the Garwood Irrigation Division were entitled to up to about 20,000 acre-feet of Highland Lakes water in 2012 based on the purchase agreement of the Garwood water right. For comparison, downstream farmers from all four operations served by LCRA used about 368,000 acre-feet of Highland Lakes water for first and second crops in 2011.

Because of the ongoing drought, LCRA will not deliver Highland Lakes water to most downstream farmers in 2013 for the second consecutive year. The cutoff of Highland Lakes water became official at 11:59 p.m. on March 1, 2013, when the combined storage of lakes Travis and Buchanan was less than 850,000 acre-feet. That is the trigger point in an emergency drought relief order requested by LCRA and approved by the Texas Commission on Environmental Quality on Feb. 13, 2013. Combined storage on March 1 at 11:59 p.m. was 822,782 acre-feet, or 40.9 percent full. Like the 2012 order, the 2013 emergency order is a temporary amendment to the Water Management Plan. The order expires June 18, 2013. On May 6, 2013, LCRA filed an application with the Texas Commission on Environmental Quality to extend the emergency drought order until Oct. 15, 2013, to cover the end of the growing season.

- Jan. 27, 2011
- Jan. 20, 2011
- Dec. 17, 2010
- Nov. 19, 2010
- Nov. 3, 2010
- Oct. 15, 2010
- Sept. 27, 2010
- Sept. 15, 2010
- Sept. 3, 2010
- Aug. 13, 2010
- Aug. 4, 2010
- July 14, 2010

 Print this page

— Updated on May 8, 2013 at 02:53 PM —

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LAW OFFICES
MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.

RECEIVED
MAY 14 2013
BY: 

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FAX COVER SHEET

FROM: Glenda Roselle

DIRECT DIAL: (512) 495-6103

DATE: May 14, 2013

PAGES SENT: 36
(INCL. THIS PAGE)

Re: End Op's Response to Environmental Stewardship's Request for Party Status

COMMENTS: Please see attached

TO:	FAX NUMBER	PHONE NUMBER
Eric M. Allmon	(512) 482-9346	(512) 469-6000
Robin Melvin	(512) 480-5888	(512) 480-5688
Michael A. Gershon	(512) 322-5872	
Edmond R. McCarthy, Jr.	(512) 225-5565	(512) 225-5606
Greg Graml	(512) 473-4010	(512) 473-3378