

SOAH DOCKET NO. 952-13-5210

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

PROPOSAL FOR DECISION

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I. INTRODUCTION

Chapter 36 of the Texas Water Code (Code) outlines the process by which landowners obtain the right to produce the groundwater that they own within groundwater conservation districts with jurisdiction to manage and regulate production from groundwater sources. End Op, L.P. (End Op) has applied for permits to produce groundwater within the Lost Pines Groundwater Conservation District (District) located in Bastrop and Lee Counties. End Op will produce the groundwater from property it owns or has the option to lease for delivery to municipal and industrial customers in Travis and Williamson Counties.

The District's powers include the power to require that a permit be issued before a groundwater well is drilled or operated and before groundwater is transported outside the District boundaries. End Op applied to the District for permits to drill, operate, and export water from 14 wells in the total amount of 56,000 acre-feet per year from Lee and Bastrop Counties (the Applications). The District's General Manager (General Manager or GM) concluded that End Op's Applications complied with the District's Rules and, after considering Chapter 36 of the Code, recommended approval of the Applications, with certain conditions, to the District's Board.

Aqua Water Supply Corporation (Aqua) filed a protest and sought a contested case hearing on the Applications. The case was referred to the State Office of Administrative Hearings (SOAH) to address the issues raised by Aqua and the overall issue of whether the requested permits should be issued, to what extent, and with what conditions. The

Administrative Law Judge (ALJ) recommends that the District Board approve End Op's Applications with certain conditions as set forth in this proposal for decision.

II. PROCEDURAL HISTORY

In July 2007, End Op filed the Applications with the District for 14 wells seeking to withdraw an aggregate of 56,000 acre-feet per year from the Simsboro member of the Carrizo-Wilcox Aquifer (Simsboro or Aquifer) to be used for public water supply purposes in Travis and Williamson Counties.¹

After meeting with the General Manager to discuss its plans, End Op spent nearly \$4 million to conduct extensive pumping and hydrological studies on how the Simsboro would react to sustained commercial production.² A hydrological report prepared by the Thornhill Group, Inc., containing the results of the hydrological study, was provided to the District in April 2009.³ Soon after the study, the District imposed a moratorium on the processing of or action on permit applications. The moratorium prevented action on End Op's Applications until January 2013.⁴

Once the District's moratorium was lifted, the District began processing permit applications including End Op's Applications under the District's new rules.⁵ On March 18, 2013, the District deemed End Op's Applications administratively complete and posted notice that a hearing would be held.⁶ As prescribed under the District's Rules, End Op mailed and published notice of both End Op's Applications and the District's plans to conduct a hearing and consider End Op's Applications.⁷

¹ End Op Ex. 1.

² Tr. at 62-63.

³ End Op Ex. 40 at 3.

⁴ End Op Ex. 4.

⁵ End Op Ex. 4.

⁶ End Op Ex. 11.

⁷ End Op Ex. 12.

Based upon the Applications and all supporting information and under the District's Rules updated to meet the District's planning goals, on March 20, 2013, the General Manager recommended that the District grant End Op's Applications with the Standard and Special Conditions set out in the draft operating and transfer permits.⁸

In April 2013, Aqua filed a protest against and requested a contested case hearing on End Op's Applications. On April 18, 2013, a public hearing was held on End Op's Applications to consider Aqua's protest.⁹ On May 9, 2013, End Op requested that the District contract with SOAH to conduct a contested case hearing on Aqua's request for a contested case hearing.¹⁰

The District held a hearing on May 15, 2013, to consider the requests for a contested case hearing on the Applications and the requests for party status in any contested case hearing. On June 19, 2013, the District issued an order that: (1) granted Aqua's request for a contested case hearing on the Applications; (2) denied all other requests for a contested case hearing on the Applications, if any, as untimely under the District rules; (3) authorized the General Manager to enter into a contract with SOAH to conduct a contested case hearing on the Applications; (4) found that the requests for party status filed by Environmental Stewardship, Andrew Meyer, Bette Brown, and Darwyn Hanna (Landowners) were timely under the District rules; and (5) referred the issue of whether Environmental Stewardship, Andrew Meyer, Bette Brown, and Darwyn Hanna have standing to participate in the contested case hearing as parties at SOAH.¹¹

After a preliminary hearing on August 12, 2013, the ALJ determined that Aqua had standing as a party under the provisions of chapter 36 of the Code to participate in this contested case hearing and that the Landowners had not demonstrated the required interest to participate as parties in the contested case hearing.¹²

⁸ End Op Ex. 18.

⁹ End Op Exs. 13-15.

¹⁰ End Op Ex. 16; End Op Ex. 32.

¹¹ End Op Ex. 32.

¹² See Order No. 3.

In December 2013, End Op and Aqua entered into a settlement agreement that, among other things, obligated End Op to reduce its requested annual authorization from 56,000 acre-feet to 46,000 acre-feet per year and to limit production in Bastrop County to no more than 35% of the total authorized amount.¹³ End Op further agreed to the inclusion of proposed permit conditions to address the potential financial impacts on Aqua and other well owners of long-term pumping by End Op. In return, Aqua agreed to limit its participation in the SOAH hearing to solely those issues relevant to the permitting criterion set forth in section 36.113(d)(2) of the Code related to the potential impacts on Aqua's current District-issued permits and existing wells and water utility infrastructure that could result from pumping associated with End Op's permits, if granted in whole or in part.¹⁴

On February 11, 2014, the ALJ held the hearing on the merits in Bastrop, Texas. The record closed after the parties filed post-hearing briefs, proposed findings of fact, and conclusions of law on March 10, 2014.

III. BACKGROUND AND UNDISPUTED FACTS

The following is a summary of relevant evidence and background concerning End Op's Applications. For the most part, these facts are undisputed.

- a. The General Manager recommended that the permits be granted in full (for the original 56,000 acre-feet) with certain general and special conditions to which Aqua and End Op have agreed.¹⁵
- b. End Op designed the project and selected well locations to minimize impacts on other wells, and satisfy the district's well spacing requirements.¹⁶

¹³ End Op Ex. 45.

¹⁴ End Op Ex. 45; End Op Ex. 46.

¹⁵ End Op Exs. 18, 45-46.

- c. There are existing and projected demand and public water supply deficiencies within the service areas described in End Op's Applications that could be remedied if End Op's Applications are granted.¹⁷
- d. The Simsboro is a vast resource with approximately 1.5 billion acre-feet in storage.¹⁸
- e. Recoverable storage is something the District is required to consider under section 36.108 of the Code in 2015 when it reviews the desired future conditions (DFCs) of the Aquifer.¹⁹
- f. All pumping from an aquifer by any permit holder will have some effect on the aquifer.²⁰
- g. Drawdown does not equal loss of use of the resource or loss of the water supply. In other words, the Aquifer does not lose the ability to provide a water supply.²¹
- h. The DFC, groundwater availability model (GAM), and modeled available groundwater (MAG) do not specify what the actual impact of production will be because each of them is an estimate or prediction.
- i. The current consensus in the scientific community is that development in the Simsboro will not impact other formations within the Aquifer.²²

¹⁶ Tr. at 89.

¹⁷ Tr. at 62, 63, 83-84, 164-65; GM Ex. 2 at 11.

¹⁸ Tr. at 226.

¹⁹ Tr. at 98-99.

²⁰ Tr. at 94-95.

²¹ Tr. at 94-95, 142-43.

- j. The DFCs and MAG will be re-examined every 5 years, which correlates with the five-year term of End Op's permit request so it can be adjusted as needed when new information is collected.²³
- k. When the District revisits the DFCs in 2015, it will have to adopt DFCs that provide a balance between the highest practicable level of groundwater production and conservation and preservation and consider recoverable storage and other factors.²⁴
- l. When the DFCs are reviewed again in 2015, the District must consider socioeconomic impacts, such as stifled growth and development, reasonably expected to occur.
- m. When analyzing impacts, the question is not whether will there be some effect but whether the permits will "unreasonably affect existing groundwater and surface water resources or existing permit holders."²⁵
- n. End Op agreed to the Special Conditions under the settlement agreement that further protect the resource and existing use.²⁶ The General Manager's standard and special provisions and the Special Conditions will ensure that End Op's pumping does not unreasonably affect the resource or existing use.²⁷
- o. Even though the District Rules and chapter 36 of the Code do not require mitigation, End Op agreed to permit conditions requiring it to create and fund

²² Tr. at 204-05.

²³ Tr. at 166, 220-21.

²⁴ Tr. at 98-100, 215-18.

²⁵ Tr. at 234.

²⁶ Tr. at 124-25, 176-77, 212, 234.

²⁷ Tr. at 105-06.

two mitigation funds that would address all impacts, even those that are not unreasonable.²⁸ One mitigation fund addresses any unreasonable impacts on Aqua.²⁹ The other mitigation fund addresses any impacts to well owners other than Aqua.³⁰

IV. SUMMARY OF PARTIES' POSITIONS

The following provides a brief summary of the parties' positions. End Op maintains that it has met all the criteria in chapter 36 of the Code and the District's Rules to obtain the requested permits for the amounts and with the conditions recommended by the General Manager in his recommendation to approve the Applications. End Op further maintains that the Special Conditions agreed to between End Op and Aqua will further protect the Aquifer and address adverse impacts.

Aqua maintains that the evidence shows that if End Op's Applications are approved they would unreasonably impact Aqua but for the mitigation and commitments in the End Op-Aqua settlement agreement and Special Conditions. Therefore, Aqua requests that any permits issued to End Op include the Special Conditions it agreed to under the settlement with End Op.

The General Manager supports the approval of the Applications for the 14 proposed wells with the agreed-upon withdrawal limits, but only if the permits contain certain Special Conditions. The Special Conditions will assure that End Op has the authority to operate the wells at their proposed locations, the proposed use of water is beneficial, End Op and its customers will achieve water conservation, and the District will retain the power to further limit End Op's withdrawals to achieve DFCs and protect existing users. The General Manager, however, opposes the Special Condition in the settlement agreement relating to mitigation funds.

²⁸ Tr. at 178.

²⁹ Tr. at 89, 90, 105-06, 124-25, 136-38.

³⁰ Tr. at 77, 105-09, 178.

The General Manager has no objection to End Op and Aqua's private agreement that End Op will pay funds into an account to address the potential impacts of End Op's pumping on Aqua's wells. The General Manager, however, believes that including a related Special Condition in the permits would require the District to enforce a private agreement, which could be costly and time-consuming.

V. ISSUES

A. Conformance with chapter 36 of the Code and the District's Rules

The Code and District Rules require the Board to consider, in granting or denying a permit application, whether the application conforms to chapter 36 of the Code and the District Rules. Code § 36.113(d)(1); District Rule 5.2.C(1). District Rule 14.3 requires the General Manager to conduct a technical review of each permit application to determine if the application is Administratively Complete. The Rules define "Administratively Complete" to mean: (1) all information requested by the District has been fully and accurately provided; and (2) all applicable fees have been paid.

The General Manager determined that End Op's Applications were administratively complete "for purposes of further processing," but recommended a special condition to address a missing piece of documentation.³¹ Section 36.113(c)(2) of the Code and District Rule 4.2.A(2) provide that, if the applicant is different from the owner of the groundwater rights on the land on which the well will be located, then the applicant must submit the name of the groundwater rights owner and "documentation of the applicant's authority to construct and operate a well on the property for the proposed use." End Op submitted documentation that it owns the property on which Well No. 10 will be located.³² For the remaining 13 wells, End Op submitted an Option Agreement that gives it the option to enter into a groundwater lease with the owner of the property on which those wells will be located. The Option Agreements do not give End Op the

³¹ End Op Ex. 11.

³² End Op Ex. 9.

right to drill on the land on which those 13 wells will be located, but the groundwater lease will do so if it is executed.³³

The General Manager recommends that Operating Permits for the 13 wells be granted if they contain the following Special Condition concerning a groundwater lease submitted with the Application to the District within 30 days of the date of issuance of the permit:

Within 30 days from the date of issuance of the permit, Permittee shall submit to the District a fully executed Groundwater Lease between Permittee and [Landowner] in the form submitted with the application pursuant to which this permit has been issued, as it may have been amended by the agreement of the parties prior to the date of issuance of the permit. If Permittee fails to submit a fully executed Groundwater Lease in that form within 30 days from the date of issuance of this permit, then this permit will automatically terminate and be of no further force and effect.

End Op does not oppose the Special Condition, has agreed to comply with it, and understands that its permit will automatically terminate if it does not comply.³⁴

Because End Op has agreed to comply with this Special Condition to submit a groundwater lease within 30 days of the issuance of the permit, the ALJ recommends the District Board adopt this Special Condition.

B. Unreasonable effect on existing groundwater and surface water resources or existing permit holders

The Code and District Rules provide that, before granting or denying a permit, the District Board “shall consider whether . . . the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders.” Code § 36.113(d)(2); District Rule 5.2.C(2).

The Central Queen City-Sparta GAM is a three-dimensional groundwater flow model developed by the Texas Water Development Board (TWDB) for the Simsboro and other aquifers

³³ End Op. Ex. 7 at ENDOP000094.

³⁴ End Op Ex. 40.

that lie within the District. This GAM is one of a number of groundwater availability models developed, according to TWDB, “to estimate groundwater availability for various water use strategies and to determine the cumulative effects of increased water use and drought.”³⁵

The GAM is not intended to predict drawdowns at a particular well or point, but it can estimate the magnitude of the impact of pumping on water levels over a scale of tens of miles.³⁶ The General Manager’s hydrology expert, Dr. Matt Uliana, ran the GAM model with a number of different assumptions about the amount of water that End Op and existing exempt and permitted wells would produce between 2014 and 2060. Dr. Uliana then generated maps showing the drawdown contours resulting from these scenarios across the District.³⁷

The GAM runs performed by Dr. Uliana show that End Op’s production of 46,000 acre-feet per year, with no more than 20,000 acre-feet produced from the proposed Bastrop County wells, and without any other pumping from Simsboro, will cause significant drawdown in the Simsboro within the District. Those runs show drawdowns between 100 and 350 feet in Bastrop County in 2060 in the areas where other Simsboro wells are completed, including Aqua’s wells.³⁸

Assuming that existing wells continue pumping at 1999 levels, and that 46,000 acre-feet per year is produced from End Op’s proposed wells, with no more than 20,000 acre-feet produced from the proposed Bastrop County wells, the predicted drawdown will be from 150 to 400 feet in 2060 in the same area.³⁹

Assuming that production from existing wells increases as projected until 2060, and that 46,000 acre-feet per year is produced from End Op’s proposed wells, with no more than 20,000

³⁵ GM Ex. 1 at ATTACHMENT MMU-8, p. 1-1.

³⁶ GM Ex. 1 at ATTACHMENT MMU-8, p. xxviii.

³⁷ GM Ex. 1 at ATTACHMENTS MMU-3, MMU-5.

³⁸ GM Ex. 1 at ATTACHMENT MMU-5, Figure 1D.

³⁹ GM Ex. 1 at ATTACHMENT MMU-5, Figure 1C.

acre-feet produced from the proposed Bastrop County wells, drawdowns in the same Bastrop County area will be from 250 to 500 feet in 2060.⁴⁰

Because the General Manager opines that the production of 46,000 acre-feet of water per year from the Simsboro will have a significant impact on the Aquifer and existing permit holders, the General Manager recommends that the Applications be granted if they expressly allow the District to further limit production from End Op's wells in the future.

James Beach is a hydrogeologist and testified for Aqua. His analysis indicated that the water level decline in Aqua's Simsboro well fields caused by the production from End Op's proposed wells would have a significant impact on the ability of Aqua's wells to continue to produce at the volume they were designed to produce.⁴¹ Mr. Beach reached this conclusion based on well and pumping data and hydrogeologic information, and by employing groundwater modeling, pump tests, and an analytic solution, the Theis equation.⁴² Mr. Beach testified that each of Aqua's Simsboro wells would be significantly affected in a way that would require lowering a pump and/or eventually re-drilling the well.⁴³ He stated that, if wells are re-drilled at different and perhaps distant well sites, then costly infrastructure must be designed and constructed to connect this new infrastructure with the preexisting utility system.⁴⁴ He estimated that the combined effects of End Op's wells would cost Aqua over \$15 million in order for it to provide continuous and adequate service.⁴⁵ Aqua, however, maintains that End Op's mitigation addresses these adverse impacts. Therefore, Aqua requests that the ALJ recommend that all the permit amendments and permit conditions requested and agreed to by End Op be approved.

Although there is conflicting evidence on drawdown amounts and how to determine the drawdown amounts over time, the persuasive evidence shows that the Simsboro is a sustainable

⁴⁰ GM Ex. 1 at ATTACHMENT MMU-5, Figure 3-C.

⁴¹ Aqua Ex 4 at 9.

⁴² Tr. at 143-44.

⁴³ Aqua Ex. 4 at 9-18; Tr. at 131-32, 141, 148-55.

⁴⁴ Tr. at 131-32.

⁴⁵ Tr. at 126.

resource capable of producing the quantity of water End Op has requested for decades with no unreasonable adverse effect on the resource or on existing well owners producing from the Aquifer.⁴⁶ For example, Dr. Uliana has estimated there is approximately 1.5 billion acre-feet of groundwater in storage in the Simsboro, and Mr. Keester testified that after End Op pumps 100% for fifty years beginning in 2014, 95% of the water storage would still remain.⁴⁷ It is undisputed that drawdown from End Op's project would not diminish either the capacity or the ability of the resource to produce water on a sustainable basis for decades.⁴⁸ This resource is further protected, however, by: (1) well locations in the Simsboro specifically selected by End Op's technical team to reduce potential impacts; (2) the District's spacing rules; (3) the General Manager's proposed standard and special permit conditions that: (i) limit End Op's permits to a five-year term; and (ii) give the District the ability to reduce the amount authorized to End Op during a term; and (4) the Special Conditions that reduce the total requested amount, limit the production from Bastrop County to no more than 35% of the total authorized amount, and provide and fund mitigation.⁴⁹

Therefore, the ALJ agrees with End Op that its requested authorization would not unreasonably affect existing wells if the following Special Conditions are approved. First, the five-year term and the District's ability to limit production over the long term not only protect the resource but also prevent unreasonable effects on existing use as the authorized amount can be reduced at any time or upon renewal every five years. Second, the agreed Special Conditions limiting total annual withdrawal to 46,000 acre-feet and production in Bastrop County to no more than 35% of the total authorized production will substantially reduce the potential for adverse economic impacts. Finally, the agreed Special Conditions requiring the creation and funding of Aqua's mitigation fund, and a fund for other well owners in the Simsboro or within one mile of End Op's wells, both calculated assuming the maximum modeled impacts, guarantee there will be no unreasonable impacts to existing well owners and users. For these reasons, the ALJ recommends that the District Board approve the five-year term and a Special Condition to

⁴⁶ Tr. at 99-100, 230-34.

⁴⁷ End Op Ex. 41 at 13; Tr. at 105, 226-28.

⁴⁸ Tr. at 105, 230-34.

⁴⁹ Tr. at 39, 89, 90, 105-06, 166, 230-34; End Op Ex. 41 at 4.

limit future production as proposed by the General Manager, and the agreed Special Conditions outlined in End Op and Aqua's settlement agreement.⁵⁰

Although the ALJ realizes that the General Manager objects to the Special Conditions relating to the mitigation funds, these Special Conditions are an important aspect of the End Op-Aqua settlement agreement and provide further protection against unreasonable impact to Aqua and other well owners. The General Manager does not object to the mitigation funds, but believes that they should be part of a private agreement between End Op and Aqua to prevent any possibility of the District becoming involved if a dispute arises regarding the distribution of funds. If the private agreement only involved Aqua, then a private agreement would be a viable option. However, given that the mitigation funds also involve unidentified well owners, it would be virtually impossible for End Op to enter into private agreements with these individuals. Furthermore, End Op seems committed to paying the mitigation funds to reduce unreasonable impact; therefore, potential disputes seem unlikely. Given the possibility that a dispute might arise with the mitigation funds, the District Board might want to consider some other mechanism or other language to eliminate the possibility that it would be involved in a dispute involving the mitigation funds.

C. Dedicated to a beneficial use

The Code and District Rules provide that, before granting or denying a permit, the District Board "shall consider whether . . . the proposed use of water is dedicated to any beneficial use." Code § 36.113(d)(3); District Rule 5.2.C(3).

The Code further requires the TWDB to designate water planning groups to adopt regional water plans for designated areas within the state. Code § 16.053. Among other things, a regional water plan must include information on "projected water use . . . in the regional water planning area." Code § 16.053(e)(9)(A). The majority of Williamson County is in the Region G

⁵⁰ End Op Ex. 46.

water planning area, and the remainder of Williamson County and Travis County are in the Region K water planning area.⁵¹

The 2011 Region G plan predicts a 33,797 acre-feet per year municipal water shortage in Williamson County in 2030, and a 112,609 acre-feet per year shortage in 2060. There are no shortages predicted for the portion of Williamson County within Region K between 2020 and 2060. The 2011 Region K plan predicts an 11,053 acre-feet per year municipal water shortage in Travis County in 2020, a 13,897 acre-feet per year shortage in 2030, a 16,964 acre-feet per year shortage in 2040, a 50,264 acre-feet per year shortage in 2050, and an 85,794 acre-feet per year shortage in 2060.⁵²

End Op has submitted a Water Supply Agreement between End Op and Williamson County Water Control and Improvement District No. 2 (WCID Agreement).⁵³ The WCID Agreement provides that, following the issuance of required governmental approvals and a construction period, End Op will make available to the WCID, on a take or pay basis, 100 acre-feet per year. The take or pay volume may be increased, but the Agreement provides that it shall not exceed 56,000 acre-feet per year. The WCID Agreement also allows the WCID to designate any portion of the take or pay volume for pass-through to third parties who are not identified in the Agreement.⁵⁴ At this point, the WCID Agreement does not contain any of the terms common to a water supply contract.

Because of the lack of evidence that any of the 46,000 acre-feet of water requested is “dedicated” to municipal use, the General Manager recommends that the requested Operating Permits contain the following Special Condition providing that the authorization for withdrawal of any amount of water will terminate unless End Op demonstrates that the water has been dedicated to a beneficial use within one year of the date of the issuance of the Permits:

⁵¹ GM Ex. 2 at 11.

⁵² GM Ex. 2 at 11.

⁵³ End Op Ex. 10.

⁵⁴ End Op Ex. 10.

Within 365 days from the date of issuance of the permit, Permittee shall submit to the District a binding contract to provide water in the full authorized annual withdrawal amount for the authorized purpose of use to one or more End Users in the authorized places of use. For purposes of this section, a “binding contract” means a contract that sets forth in detail the terms, provisions and conditions for the sale and purchase of water produced under this permit and that is binding and will continue in effect for so long as may be agreed to by the parties. If Permittee fails to submit a binding contract or contracts in the aggregated annual withdrawal amount of [permitted amount] per year within 365 days from the date of issuance of this permit, then the aggregated annual withdrawal amount in this permit shall be automatically reduced to the amount for which Permittee has submitted a binding contract or contracts; and the General Manager is authorized to issue an amendment to this permit reflecting the reduced amount.

Although End Op disagrees with the General Manager’s characterization of its contract and whether contracts substantiating the full-authorized amount are legally required, End Op has agreed to comply with the Special Condition to demonstrate that the water will be dedicated to a beneficial use within one year of the date of the issuance of the Permits.

The Special Condition to submit binding contracts to supply the requested amount of water for beneficial use within one year following the issuance of the permit is a reasonable condition agreed to by End Op; therefore, the ALJ recommends that the District Board adopt this Special Condition.

D. Consistent with the District Management Plan

The Code and District Rules provide that, in granting or denying a permit application, the Board “shall consider whether . . . the proposed use of water is consistent with the district management plan.” Code § 36.113(d)(4); District Rule 5.2.C(5).

With the permit conditions proposed in the General Manager’s Draft Operating Permit, the General Manager concluded that End Op’s proposed use of water is consistent with the District’s Management Plan to manage groundwater to meet demands on a sustainable basis. Therefore, the District Board should find that End Op’s proposed use is consistent with the District’s Management Plan.

E. Agreement to avoid waste and achieve water conservation

The Code and District Rules provide that, in granting or denying a permit application, the Board “shall consider whether . . . the applicant has agreed to avoid waste and achieve water conservation.” Code § 36.113(d)(6); District Rule 5.2.C(5).

End Op has agreed to avoid waste and conserve water and has submitted a proposed drought contingency plan.⁵⁵ The General Manager recommends that the Operating Permits be granted if they contain the following Special Condition:

At the time that Permittee submits a binding contract with an End User to the District, Permittee shall provide the District with the End User’s water conservation plan and drought contingency plan, which must comply with the relevant provisions of the Texas Water Code and rules of the Texas Commission on Environmental Quality or successor agency.

End Op does not object and has agreed to comply with the condition recommended by the General Manager.⁵⁶ Therefore, the ALJ recommends that the District Board approve the Special Condition that End Op provide its end user’s water conservation plan and drought contingency plan upon entering into a binding contract with the end user.

F. Reasonable diligence will be used to protect groundwater quality and well plugging guidelines

The Code and District Rules provide that, in granting or denying a permit application, the Board “shall consider whether . . . the applicant has agreed that reasonable diligence shall be used to protect groundwater quality” and whether “the applicant will follow well plugging guidelines at the time of well closure. Code § 36.113(d)(7); District Rule 5.2.C(6), (7). The District Rules additionally contain a number of provisions relating to water quality, including provisions requiring the plugging of deteriorated wells and the sealing of wells that threaten

⁵⁵ GM Ex. 2 at 14.

⁵⁶ End Op Ex. 40 at 9-10.

human health and safety or the environment. *See* District Rule 10.2 (Well Construction), Rules Section 12 (Prohibition Against Waste and Pollution), and Rule 13.4 (Sealing of Wells).

The General Manager recommends a Standard Condition as required by District Rule 5.3B (1) stating that acceptance of the permit constitutes an acknowledgment and agreement to comply with the permit's terms and conditions, and the District's rules and management plan.⁵⁷ End Op does not object and has agreed to comply with this Special Condition.⁵⁸ Accordingly, the ALJ recommends that the District Board approve the Standard Condition, which will require End Op to use reasonable diligence to protect groundwater quality.

End Op has also agreed to a Standard Condition stating that acceptance of the permit constitutes an acknowledgment and agreement by End Op to comply with District Rule 13.4 regarding sealing of wells.⁵⁹ Accordingly, the ALJ recommends that the District Board approve a Standard Condition that that End Op will comply with District Rule 13.4 regarding sealing of wells.

G. Management of total groundwater production on a long-term basis to achieve Desired Future Condition

District Rule 9.1 provides: "To accomplish the purposes of Texas Water Code chapter 36, and to achieve the stated purposes and goals of the District, including managing the sustainability of the aquifers and preventing significant, sustained water-level declines within the aquifers, the district shall manage total groundwater production on a long-term basis to achieve the applicable Desired Future Condition. The District may establish production limits on all permits for this purpose following the procedures in Rule 14.1 and 14.2. All Operating Permits are issued subject to any future production limits adopted by the District under this Rule."

⁵⁷ GM Ex. 2 at 15.

⁵⁸ End Op Ex. 40 at 10.

⁵⁹ End Op Ex. 40 at 10.

The District currently has seven monitoring wells in the Simsboro, including one well provided by End Op, which allow it to monitor water levels in the Simsboro “very nearly in real time.”⁶⁰ This monitoring network, and improvements to it, will allow the District to determine when and what production limits are necessary in the future for the achievement of applicable DFCs.

“A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.” Code § 36.1132(a). Code section 36.1132(b) requires the District to consider current and projected exempt uses and actual use under existing permits when considering whether granting a permit is consistent with the District’s duty to manage the Aquifer on a long-term basis to achieve applicable DFCs. The Code and District Rules also provide that, in issuing permits, “the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition” and consider certain factors including (1) TWDB’s modeled available groundwater, (2) TWDB’s estimate of the current and projected amount of water produced by exempt wells, (3) the amount of groundwater authorized for withdrawal by previously issued permits, (4) a reasonable estimate of the amount of groundwater actually produced under those permits, and (5) yearly precipitation and production patterns. Code § 36.1132(b); District Rule 5.2.C(8).

The Code requires TWDB to divide the state into GMAs and requires the groundwater conservation district within each GMA to adopt “desired future conditions for the relevant aquifers within the management area.” Code § 36.108. “Desired future condition” means “a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.” Code § 36.001(30). The Code required the initial DFCs to be adopted before September 1, 2010, and requires them to be reconsidered every five years thereafter. Code § 36.108(d).

⁶⁰ GM Ex. 2 at. 17.

The District is in GMA 12. On August 11, 2010, the districts in GMA 12 adopted a DFC for the Simsboro in the District: a District-wide average drawdown between January 2000 and December 2059 of 237 feet. The District-wide DFC was also broken into two county-wide DFCs: a Bastrop County average drawdown between January 2000 and December 2059 of 145 feet; and (b) a Lee County average drawdown between January 2000 and December 2059 of 345 feet.⁶¹

Dr. Uliana used the TWDB GAM to estimate the impact of End Op's pumping on average water levels within the District in 2060 – the future time specified in the applicable DFC. He ran the model several times with different assumptions. He projected waters levels if End Op produced 46,000 acre-feet per year, 30,000 acre-feet per year, and 10,000 acre-feet per year. For other users in the District, Dr. Uliana ran the model assuming they pumped as they did in 1999, as they are projected to pump in future years, and as they are fully permitted to pump.

Withdrawals from existing exempt and permitted wells in the District as of December 31, 2012 are projected to increase as follows: (i) 20,298 acre-feet per year in 2010, (ii) 28,184 acre-feet per year in 2020; (iii) 31,240 acre-feet per year in 2030; (iv) 34,295 acre-feet per year in 2040; (v) 37,361 acre-feet per year in 2050; and (vi) 40,406 acre-feet per year in 2060. The projected withdrawals for existing wells are reasonable estimates of the amount of groundwater that may actually be produced from the Simsboro under existing District Operating Permits and under exemptions from permitting granted by the District Rules and Code section 36.117. They are based on population growth and water needs projected in the regional and GMA planning process, and historical increases in groundwater withdrawals within the District.⁶²

⁶¹ GM Ex. 2 at 16.

⁶² GM Ex. 2 at 19.

The results of those GAM runs are as follows:⁶³

	Bastrop County projected drawdown (feet)	Lee County projected drawdown (feet)	District-wide projected drawdown (feet)
Applicable DFC	145	345	237
46,000 afy ⁶⁴ + 1999 pumping	179	384	275
30,000 afy + 1999 pumping	154	335	239
10,000 afy + 1999 pumping	104	282	188
46,000 afy + projected 2010-2060 pumping	226	415	315
30,000 afy + projected 2010-2060 pumping	202	368	280
10,000 afy + projected 2010 to 2060 pumping	155	317	231
46,000 afy + projected 2010-2060 pumping + 2013 permitted amounts	255	481	361
30,000 afy + projected 2010-2060 pumping + 2013 permitted amounts	232	434	327
10,000 afy + projected 2010-2060 pumping + 2013 permitted amounts	185	384	279

This composite table shows that the GAM predicts that the applicable Simsboro DFC will not be achieved unless production from other existing exempt and permitted wells remains at 1999 levels and that End Op's production from the proposed wells is limited to less than 30,000 acre-feet per year.

⁶³ GM Ex. 1 at 18, 21-22.

⁶⁴ Acre-feet per year.

Because the General Manager believes that some of the evidence shows that the applicable DFC will not be achieved if End Op withdraws 46,000 acre-feet per year from the Simsboro, the General Manager recommends that the requested Operating Permits be granted if the Permits contain the following Special Condition expressly recognizing the District's ability to restrict End Op's pumping in the future:

This permit is issued subject to any future production limits adopted by the District under the District Rules.

Although End Op objects to the current DFCs and the process by which the District established them, End Op does not object to the Special Condition and has agreed to comply with the condition.⁶⁵ Therefore, the ALJ recommends that the District adopt the Special Condition that End Op's Operating Permits are subject to future production limits adopted by the District.

H. Effect on existing water resources and permit holders

The General Manager agrees that the five-year term and a Special Condition that subjects the permit to future production limits are sufficient to address the effect on existing water resources and permit holders.⁶⁶ To ensure that there are no unreasonable impacts, End Op has agreed to all of the General Manager's Standard and Special Conditions.⁶⁷

If the General Manager's Standard and Special Conditions and the Special Conditions under the settlement agreement, limiting production and establishing mitigation funds and obligations are included as permit conditions, the ALJ concludes there will not be unreasonable impacts on the resource or existing users. The ALJ recommends that all of the General Manager's Standard and Special Conditions and the Special Conditions under the settlement agreement be approved by the District Board.

⁶⁵ End Op Ex. 40 at 10.

⁶⁶ GM Ex. 2 at 19.

⁶⁷ End Op Ex. 40 at 10.

I. Conditions to prevent waste, achieve water conservation, minimize drawdown or reduction of artesian pressure or lessen well interference

District Rule 5.2.C(9) provides that, in granting or denying a permit application, the Board shall consider whether “the conditions and limitations in the Operating Permit prevent waste, achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells.” *See also* Code § 36.113(f).

The General Manager believes that the proposed Standard and Special Conditions prevent waste, achieve water conservation, and minimize drawdown or reduction of artesian pressure or lessen well interference.⁶⁸ End Op concurs and has specifically selected well locations that will achieve those goals and comply with the District’s spacing requirements.⁶⁹ Additionally, End Op points out that the Special Conditions under the settlement agreement reduce the total requested amount, limit production in Bastrop County, and provide mitigation that will further minimize drawdown, reductions in artesian pressure, and lessen well interference. Accordingly, the ALJ recommends that the District Board approve the Standard and Special Conditions recommended by the General Manager and the Special Conditions in the settlement agreement.

J. History of non-compliance

District Rule 5.2.C(10) requires that, in granting or denying a permit application, the District Board shall consider “whether the applicant has a history of non-compliance with District Rules and chapter 36 of the Texas Water Code, including any record of enforcement actions against the applicant for violation of District Rules or chapter 36.” End Op does not have a history of noncompliance with the Code or District Rules.⁷⁰

⁶⁸ GM Ex. 2 at 21.

⁶⁹ Tr. at 39, 89; End Op Ex. 41 at 4.

⁷⁰ GM Ex. 2 at 20.

K. Availability of water in the District and in the proposed receiving area during the period for which the water supply is requested

The General Manager considered the availability of water in the District and in the proposed receiving area when he made his recommendation to grant End Op's permits in full with certain Standard and Special Conditions.⁷¹ End Op submitted evidence supporting the availability of the water in the District and the projected shortage in the proposed locations of use.⁷² End Op has agreed to comply with the Standard and Special Conditions recommended by the General Manager regarding availability of water in the District and in the proposed receiving area during the period for which the water supply is requested.⁷³ The ALJ recommends the District Board approve the Standard and Special Conditions to ensure availability of water in the District and in the proposed receiving area during the period for which the water supply is requested.

L. The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users with the District

The General Manager considered the effect of the proposed transfer on aquifer conditions, depletion, subsidence, and the effects on existing permit holders or other users when he made the recommendation to grant End Op's permits in full with certain Standard and Special Conditions.⁷⁴ Code § 36.122(f); District Rule 6.3.B. End Op submitted evidence demonstrating that the transfer of the water out of the District will have no effect on the Aquifer or other users other than the impacts that all pumping, including End Op's, will have on the Aquifer.⁷⁵ End Op has agreed to comply with the related Standard and Special Conditions recommended by the General Manager.⁷⁶ The ALJ recommends that the District approve these Standard and Special

⁷¹ GM Ex. 2 at 21.

⁷² End Op Ex. 41 at 11-12.

⁷³ End Op Ex. 40 at 10.

⁷⁴ GM Ex. 2 at 21-22.

⁷⁵ End Op Ex. 41 at 11.

⁷⁶ End Op Ex. 40 at 10.

Conditions to ensure that the transfer of the water out of the District will have no effect on the Aquifer or other users other than the impacts that all pumping will have on the Aquifer.

M. The approved regional water plan and district management plan

The General Manager considered the regional water plan and District Management Plan when he made his Recommendation to grant End Op's permits in full with certain standard and special conditions.⁷⁷ End Op submitted evidence that End Op's Applications are consistent with the approved regional plan and the District Management Plan⁷⁸ and has agreed to comply with the Standard and Special Conditions recommended by the General Manager.⁷⁹ The ALJ recommends that the District Board approve these Standard and Special Conditions, which will require End Op to comply with the approved regional water plan and District Management Plan.

VI. CONCLUSION

The evidence in this proceeding consists of varying opinions concerning the modeling of the impacts of the requested production, deficiencies in the GAM and DFC process, the extent to which impacts or drawdown would occur due to End Op's pumping, and whether the DFC will be met in the next 50 years. Despite these differences of opinion, the evidence establishes that the resource and all existing users will be able to rely on this water from the Aquifer for more than 50 years even if End Op's applications are approved. Furthermore, approval of End Op's Applications is consistent with chapter 36 and the District's Rules, and will not cause unreasonable impacts to the Simsboro or existing users. The General Manager's Standard and Special Conditions and the Special Conditions under the settlement agreement will protect the Aquifer and existing users. Therefore, the District Board should approve End Op's Applications in the total amount of 46,000 acre-feet per year with all Standard and Special Conditions proposed by the General Manager and the Special Conditions agreed to by End Op and Aqua.

⁷⁷ GM Ex. 2 at 21.

⁷⁸ End Op Ex. 41 at 14-17.

⁷⁹ End Op Ex. 40 at 10.

VII. FINDINGS OF FACT

Procedural History

1. In July 2007, End Op filed applications (Applications) seeking operating and transfer permits with the Lost Pines Groundwater Conservation District (District) 14 wells to withdraw an aggregate of 56,000 acre-feet of groundwater per year from the Simsboro member (Simsboro) of the Carrizo-Wilcox Aquifer (Aquifer) to be used for public water supply purposes in Travis and Williamson Counties.
2. End Op is an investment partnership formed for the purpose of developing a groundwater supply project in Lee and Bastrop Counties.
3. End Op has options to lease or owns approximately 13,000 acres of land in Lee and Bastrop Counties.
4. End Op proposes to drill and operate seven wells in Lee County and seven wells in Bastrop County on property it either owns or has options to lease.
5. The well locations were chosen to minimize, as far as practicable, the effects of production on existing Aquifer users.
6. The location of each proposed well complies with the District's spacing requirements.
7. The Thornhill Group, Inc. (Thornhill), End Op's hydrogeologic consultants, conducted extensive testing, including drilling and completing a large capacity production well and two test wells and performing long term pump tests to investigate the actual characteristics of the Aquifer at and near their proposed well sites.
8. Soon after the Thornhill study was complete, the District imposed a moratorium on the processing of or action on permit applications. This moratorium prevented action on End Op's Applications until January 2013.
9. Once the District's moratorium was lifted, the District began processing permit applications including End Op's Applications.
10. On March 18, 2013, the District deemed End Op's Applications administratively complete and posted notice that a hearing would be held.
11. End Op mailed and published notice of both End Op's Applications and the District's plans to conduct a hearing and consider End Op's Applications.
12. Based upon the Applications and all supporting information, on March 20, 2013, the District's General Manager recommended that the District grant End Op's Applications for 56,000 acre-feet under the terms and Standard and Special Conditions set out in the draft operating and transfer permits provided and recommended by the General Manager.

13. In April 2013, Aqua Water Supply Corporation (Aqua) filed a protest and requested a contested case hearing on End Op's Applications.
14. On April 18, 2013, a public hearing was held on End Op's Applications.
15. Per End Op's request in May 2013, the District contracted with the State Office of Administrative Hearings (SOAH) to conduct the contested case hearing.
16. The District held a hearing in May 2013 at which it authorized the General Manager to enter into a contract with SOAH to conduct the contested case hearing on the End Op Applications for permits and additionally referred the issue of whether Environmental Stewardship, Bette Brown, Andrew Meyer, and Darwyn Hanna (collectively, the Landowners) had standing to participate as parties in this proceeding to SOAH.
17. After a preliminary evidentiary hearing on August 12, 2013, held by the SOAH Administrative Law Judge (ALJ), the ALJ determined that the evidence established Aqua's standing as a party to participate in this contested case hearing and that the record did not demonstrate that the Landowners had standing to participate as parties in this contested case hearing.
18. End Op and Aqua executed a settlement agreement in December 2013 that, among other things, obligated End Op to reduce its requested aggregate withdrawal amount from 56,000 acre-feet to 46,000 acre-feet per year and to limit production in Bastrop County to no more than 35% of the total authorized amount.
19. End Op further agreed to the inclusion of proposed permit conditions establishing mitigation funds for both Aqua and all other well owners that the parties agreed were sufficient to address the alleged financial impacts of long-term pumping by End Op.
20. Aqua agreed to limit its participation in the SOAH hearing to solely those issues relevant to the permitting criterion set forth in Section 36.113(d)(2) of the Texas Water Code (Code) related to the potential impacts on Aqua's current District-issued permits and existing wells and water utility infrastructure that could potentially result from pumping associated with End Op's permits, if granted in whole or in part (collectively, Special Conditions).
21. Aqua agreed that if the Special Conditions were included in End Op's permits, the conditions would sufficiently mitigate any potential impacts on Aqua and other users of the Aquifer and address alleged financial impacts on Aqua of long-term pumping by End Op.

Completeness of application

22. End Op's Applications included all of the information required in chapter 36 of the Code and the District's Rules provided the permit includes a Special Condition requiring End Op to submit executed groundwater lease(s) with the owner(s) of the property(ies) on which each will be located within 30 days of issuance of the permit.

Effect on existing groundwater and surface water resources or existing permit holders

23. End Op's pumping in compliance with the permits will not unreasonably affect existing groundwater and surface water users or existing permit holders.
24. The five-year term of the permit and a proposed special condition regarding future production limits would allow the District to reduce authorized total production if existing groundwater and surface water resources or existing permit holders are unreasonably impacted in the future by drawdowns caused by groundwater production by existing users and End Op.
25. By 2015, when the desired future conditions (DFCs) must be reconsidered, the District must consider socioeconomic impacts, such as stifled growth and development, reasonably expected to occur, the amount of total recoverable storage in the Aquifer and the impact on groundwater property rights, all factors not considered in adopting the current DFC.
26. The DFCs, groundwater availability model (GAM) and modeled available groundwater (MAG) are useful planning tools but do not provide exact predictions of the actual impact production will have on individual wells or areas. Rather, they provide predictions of overall impacts based upon input assumptions.
27. The GAM is not intended to predict drawdowns at a particular well or point, but it can estimate the magnitude of the impact of pumping on water levels over a scale of tens of miles.
28. The GAM runs performed by Dr. Matt Uliana in this case show that End Op's production of 46,000 acre-feet per year, with no more than 20,000 acre-feet produced from the proposed Bastrop County wells, and without any other pumping from Simsboro, will cause drawdown in the Simsboro within the District. Those runs show drawdowns between 100 and 350 feet in Bastrop County in 2060 in the areas where other Simsboro wells are completed, including Aqua wells.
29. Assuming that existing wells continue pumping at 1999 levels, and that 46,000 acre-feet per year is produced from End Op's proposed wells, the predicted drawdown will be from 150 to 400 feet in 2060 in the same area.
30. Assuming that production from existing wells increases as projected until 2060, drawdowns in the same Bastrop County area will be from 250 to 500 feet in 2060.

31. The GAM can overstate the effects of pumping and underestimate the Aquifer's capability to supply the needed groundwater.
32. All pumping from the Simsboro by any well owner will have some drawdown effect on the Aquifer. The largest drawdown is at the well location and decreases by distance from the location of pumping.
33. Drawdown does not necessarily jeopardize the continued use of the resource nor does it or will it cause loss of the water supply.
34. The drawdowns caused by aquifer pumping can affect the cost of operating an existing well or require well modification, but will not prevent the well owner from producing groundwater in the same quantity in the future.
35. The Aquifer will be capable of continuing to provide sustainable water supplies at the end of fifty years even if End Op produced 100% of its requested authorization every year for the next fifty years.
36. The DFCs and MAG will be re-examined every 5 years, which correlates with the five-year term of End Op's permits and thereby allow for adjustment as needed when new information is collected.
37. The Simsboro is a vast and prolific resource that has approximately 1.5 billion acre-feet in storage.
38. If current pumping in the District is assumed to continue and End Op is assumed to pump 100% of the requested amount for the next 50 years, 95% of the water in storage in the Aquifer would still remain (approximately 46 million acre-feet) and be available for future production.
39. Drawdown from End Op's project would not diminish either the capacity or the ability of the resource to produce water on a sustainable basis for existing and projected users within than the fifty year planning horizon.
40. The following will further protect the resource and existing use: (1) well locations in the Simsboro specifically selected by End Op's technical team to reduce potential impacts; (2) the District's spacing rules; (3) the General Manager's Standard and Special Conditions, limiting End Op's permits to a five-year term and giving the District the ability to reduce the amount authorized to End Op during a term; and (4) the Special Conditions that reduce the total requested amount, limit the production from Bastrop County to no more than 35% of the total authorized amount, and provide and fund mitigation for all well owners potentially incurring additional costs related to drawdown caused by groundwater production.

41. The five-year term and the District's ability to limit production during a term would allow the District to monitor the long-term impact of actual production and act to prevent unreasonable impacts on existing well owners since the District can modify and reduce the authorized production at any time or on renewal of the permits every five years.
42. Aqua is the largest utility provider and permit holder in Bastrop and Lee County and has the most wells in the Simsboro of any existing user.
43. The Special Conditions limiting total annual withdrawal to 46,000 acre-feet and production in Bastrop County to no more than 35% of the total authorized production further reduces potential impacts.
44. The financial contributions to the mitigation fund for Aqua are intended to fund the financial impacts to Aqua and its ratepayers assuming the most extreme calculated impacts using models assuming all users produce at maximum authorization.
45. Aqua has agreed that the conditions limiting pumping and creating and funding the mitigation would address any potential impacts on Aqua's permits wells or water utility infrastructure that may result from pumping associated with End Op's requested permits.
46. The Special Condition requiring the creation, administration, and funding of the separate general mitigation fund for all other potentially affected well owners will ensure that there are no unreasonable impacts from End Op's pumping on well owners other than Aqua.
47. In 2015 when the District revisits the DFCs, it will have to adopt DFCs that provide a balance between the highest practicable level of groundwater production and conservation and preservation and consider recoverable storage and other factors.

Dedicated to a beneficial use

48. End Op proposes to sell water for municipal purposes to customers located in Travis and Williamson Counties.
49. There are existing and projected demand and public water supply deficiencies within the service areas described in End Op's Applications that would be partially satisfied if End Op's Applications are granted.
50. Regional water plans demonstrate the needs for additional water for municipal purposes within those counties.
51. The majority of Williamson County is located in Region G. The 2011 Region G plan predicts a 33,797 acre-feet per year municipal water shortage in Williamson County in 2030, and a 112,609 acre-feet per year shortage in 2060.

52. Travis County and a portion of Williamson County are located in Region K. The 2011 Region K plan predicts an 11,053 acre-feet per year municipal water shortage in Travis County in 2020, a 13,897 acre-feet per year shortage in 2030, a 16,694 acre-feet per year shortage in 2040, a 50,264 acre-feet per year shortage in 2050, and an 85,794 acre-feet per year shortage in 2060.
53. No water shortages are predicted for the portion of Williamson County within Region K between 2020 and 2060.
54. If there is no long-term water supply available, growth and development are stifled.
55. End Op submitted a water supply agreement with the Williamson County Water Control and Improvement District (WCID) No. 2, dated January 29, 2013, that obligates End Op to make available on a take or pay basis groundwater that shall not exceed 56,000 acre-feet per year.
56. Water provided under End Op's water supply agreement with WCID No. 2 will be dedicated to a beneficial use.
57. The General Manager included a Special Condition in the proposed permit that requires End Op to submit binding contracts to supply the requested amount within one year following issuance of the permit with an automatic termination of the right to withdraw any amount of water for which a binding contract is not timely submitted.
58. Although End Op disagreed with the General Manager's characterization of its contract with WCID No. 2 and whether contracts substantiating the full authorized amount are legally required, End Op agreed to comply with the Special Condition.

Consistency with the district management plan

59. End Op's proposed use of water is consistent with the District's Management Plan, which requires the District to manage groundwater to meet demands on a sustainable basis.

Agreement to avoid waste and achieve water conservation

60. End Op will avoid waste and conserve water, and it has submitted a proposed drought contingency plan.
61. The General Manager recommends a Special Condition requiring End Op to provide the District with a copy of the end user's water conservation plan and drought contingency plan.
62. End Op has agreed to this Special Condition.

Reasonable diligence will be used to protect groundwater quality and well plugging guidelines

63. End Op will use reasonable diligence to protect groundwater quality and comply with well plugging guidelines.
64. The General Manager recommends a Standard Condition stating that acceptance of the permit constitutes an acknowledgment and agreement to comply with District Rule 13.4 regarding sealing of wells.
65. The General Manager recommends a Standard Condition stating that acceptance of the permit constitutes an acknowledgment and agreement to comply with its terms and conditions and the District's Rules and management plan.
66. End Op has agreed to these Standard Conditions.

Management of total groundwater production on a long-term basis to achieve an applicable desired future condition

67. The District currently has seven monitoring wells in the Simsboro, including one well provided by End Op, which allow it to monitor water levels in the Simsboro. This monitoring network, and improvements to it, will allow the District to determine when and what production limits are necessary in the future for the achievement of applicable DFCs.
68. The General Manager recommended a Special Condition that reserves the District's right to impose future production limits on the authorized production.
69. Although End Op objects to the current DFCs and the process by which the District established them, End Op has agreed to this Special Condition.
70. By including the condition authorizing the District to reduce authorized production in the future, the District can ensure that they are managing the Aquifer on a long-term basis to achieve future DFCs.

Effect on existing water resources and permit holders

71. The impacts on the resource, well owners, and permit holders are subject to varying levels; however, if the General Manager's Standard and Special Conditions and the Special Conditions under the settlement agreement, limiting production and establishing mitigation funds and obligations are included as permit conditions, there will not be unreasonable impacts on the resource, well owners, or existing users.

Conditions to prevent waste, achieve water conservation, minimize drawdown or reduction of artesian pressure or lessen well interference

72. The Standard and Special Conditions recommended by the General Manager ensure that End Op will not waste the produced water and will achieve water conservation.
73. End Op has agreed to prevent waste and achieve water conservation.
74. End Op has specifically selected well locations that comply with the District's spacing requirements and are located so as to minimize drawdown, reduce artesian pressure, and lessen well interference.
75. The Standard and Special Conditions minimize the impacts of drawdown, reduce artesian pressure, and lessen well interference.

History of non-compliance

76. End Op does not have a history of non-compliance with chapter 36 of the Code or the District's Rules.

Availability of water in the District and in the proposed receiving area during the period for which the water supply is requested

77. End Op agrees with the Standard and Special Conditions recommended by the General Manager to ensure availability of the water in the District and avoid the projected shortage in the proposed locations of use.
78. Sufficient quantities of water are available in the District to meet all projected long-term demands during the fifty-year planning period and beyond and supply the amounts requested by End Op.
79. The receiving area where End Op proposes to supply water has a substantial need for additional water supplies during the fifty-year planning period.

The projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users with the District

80. The proposed production will not result in loss of productivity or sustainable production from the Simsboro.
81. End Op has agreed to comply with the Standard and Special Conditions recommended by the General Manager to ensure that the transfer of the water out of the District will have no effect on the Aquifer or other users over and above the impacts that all pumping, including End Op's, would have on the Aquifer.

The approved regional water plan and district management plan

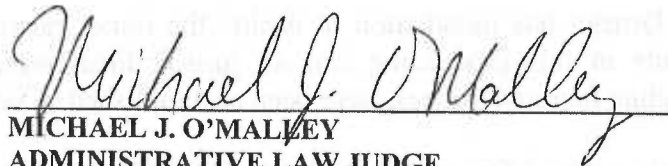
82. End Op has agreed to comply with the Standard and Special conditions recommended by the General Manager.
83. End Op's Applications are consistent with the approved Regional Water Plan and the District Management Plan.

VIII. CONCLUSIONS OF LAW

1. The District has jurisdiction to decide the issues raised by End Op's Applications for permits in this proceeding and all jurisdictional prerequisites to issuing a decision, including required notices, have been accomplished. Code Ch. 36.
2. Aqua's request for a contested case hearing was timely, and Aqua has standing to participate in this proceeding.
3. The Landowners do not meet the requirements of chapter 36 of the Code to have standing to participate in this contested case hearing.
4. Under the Standard and Special Conditions proposed by the General Manager, End Op's Applications conform to the requirements prescribed by chapter 36 of the Code and the District Rules. Code § 36.113(d)(1).
5. The proposed use of the water will not unreasonably affect existing groundwater and surface water resources or existing permit holders. Code § 36.113(d)(2).
6. The authorized amount of water (46,000 acre-feet per year) will be dedicated to a beneficial use during the term of the permits. Code § 36.113(d)(3).
7. The authorized use of the water is consistent with the District Management Plan. Code § 36.113(d)(4).
8. End Op will be required to avoid waste and achieve water conservation. Code § 36.113(d)(6).
9. End Op will be required to follow well plugging guidelines at the time of the closure of the proposed wells. Code § 36.113(d)(7).
10. End Op will be required to use reasonable diligence to protect groundwater quality. Code § 36.113(d)(7).
11. Granting the Applications is consistent with the District's duty to manage total groundwater production on a long-term basis to achieve the applicable DFC.

12. After weighing the factors under section 36.113(d) of the Code, the District should approve End Op's Applications with the Standard and Special Conditions recommended by the General Manager and the Special Conditions in the Settlement Agreement reached between End Op and Aqua.

SIGNED April 10, 2014.


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING