

## LOST PINES GROUNDWATER CONSERVATION DISTRICT MEETING ON END OP, LP GROUNDWATER PERMIT APPLICATION

(Prepared for the public by Environmental Stewardship and Neighbors for Neighbors)<sup>1</sup>

### Tonight's Meeting – Your Presence is Very Important!

The Board of Directors of Lost Pines Groundwater Conservation District may take action tonight on an application for permits by End Op, LP to operate a well field and export 46,000 acre-feet per year of groundwater out of the District.<sup>2</sup> The source of the water to be pumped from under Bastrop and Lee counties is the Simsboro formation of the Carrizo-Wilcox Aquifer Group. The Board, as the final decision maker on the application, will be advised by counsel and deliberate in executive session this evening, but any official action by the Board, either tonight or later, must be taken in public. ***Your presence reminds the Board that its constituents are interested and involved!***

Lawyers for each of the District's general manager, Aqua Water Supply Corporation (AQUA) and End Op will make their cases to the Board on a "Proposal for Decision Upon Remand" (PFD). The PFD was issued in November, 2014 by Administrative Law Judge Michael J. O'Malley of the State Office of Administrative Hearings (SOAH) and supplements his original Proposal for Decision issued on April 10, 2014.<sup>3</sup> Both decisions recommend that the Board issue operating and export permits to End Op for 46,000 ac-ft per year, despite the fact End Op does not have a firm customer for that much water.

The original Proposal for Decision was issued after AQUA's protest of End Op's application triggered a formal "contested case" hearing at SOAH in February, 2014. At a September, 2014 meeting similar to tonight's meeting, the Board sent ("remanded") that decision back to Judge O'Malley for a second hearing, limited to developing more evidence on the issue of whether End Op would make "beneficial use" of the full 46,000 ac-ft of water during the permit's initial five-year term.

### Background

End OP initially applied about seven years ago for 56,000 ac-ft per year of groundwater. Before the District acted on the permit, the Legislature passed a law requiring each groundwater district to establish its "desired future conditions" (DFC) for the aquifers in its jurisdiction, starting in 2010. The DFC are determined every five years, in cooperation with other districts in the same groundwater management area. Our District expresses

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<sup>1</sup> This information sheet was prepared as a public service by the two organizations and is not guaranteed for accuracy.

<sup>2</sup> One acre-foot of water is equal to approximately 326,000 gallons.

<sup>3</sup> Judge O'Malley is also presiding over the XS Ranch/City of Bastrop contested case hearing which began in June 2015.

its DFC in terms of how much drawdown will be tolerated in Lee and Bastrop counties at the end of each 50-year regional water planning period. The Texas Water Development Board in turn uses the DFC each five years to determine the “modeled available groundwater” (MAG) as a tool to inform the planning process and to guide districts in managing aquifers. MAG is an estimate of how much water may be pumped from each aquifer, on an average annual basis, to “achieve” (i.e. meet, but not exceed) the DFC.

The Board instituted a moratorium on permitting decisions until the first DFC were set in 2010 and then incorporated into the District’s rules and state-approved management plan. Action on all pending applications was suspended during the moratorium, which ended in late 2012. Many of you and hundreds of other citizens attended when the Board resumed permit hearings in 2013. Public interest and participation is critical.

Before the Board acted on End Op’s application, AQUA protested the permit and triggered the contested case. The formal request to join AQUA’s protest by three individual landowners and Environmental Stewardship, a landowner and 501(c)(3) organization, was denied by Judge O’Malley. Their appeal currently pending in State court seeks to “re-start” the contested case hearing and could potentially influence the Board’s deliberations tonight. See handout on appeal.

Just prior to that first SOAH hearing, AQUA and End Op announced a partial settlement that reduced the permit limits to 46,000 ac-ft per year, with at least 65% of total production to come from Lee County. (Most of AQUA’s wells are located in Bastrop County.) The exact settlement terms are not publicly known, but AQUA’s press release revealed that End Op must establish a “mitigation fund” of up to \$15 million, to be solely controlled by AQUA, as well as another \$3.75 million mitigation fund for other local landowners who prove their wells have been impacted by End Op’s pumping.

AQUA and End Op convinced Judge O’Malley to proceed with the hearing despite the settlement. AQUA and End Op also agreed to significantly limit their cases, allowing End Op to create a lengthy, virtually unchallenged official record that the Simsboro is able to yield massive amounts of water without damaging it. The testimony of End Op’s expert witnesses at the second “hearing upon remand” (including then Bastrop City Councilman Joe Beal) considerably expanded the original official record. The combined record formed the basis for Judge O’Malley’s recommendation of the 46,000 ac-ft per year permit.

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