



September 20, 2018

Mr. James Totten  
Ms. Peggy Campion  
Lost Pines Groundwater Conservation District  
908 Loop 230  
Smithville, Texas 78957

**VIA FedEx # 7732 8285 0268**  
**Fax and Email**

Re: Request for Party Status on Pending LCRA Applications

Dear Mr. Totten and Ms. Campion:

Please file the enclosed Request for Party Status on LCRA's pending applications, on behalf of our client, the City of Elgin. If you have any questions, comments, or requests, please do not hesitate to let Mike Gershon or me know.

Thank you in advance for your assistance with this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hannah E. Ging".

Hannah E. Ging  
Paralegal

Encl.: City of Elgin's Request for Party Status

cc: Service list

Mr. Thomas Mattis, City Manager  
Mr. Doug Prinz, Director, Utilities Department  
City of Elgin

Mr. Michael A. Gershon *of the firm*

**APPLICATIONS OF LOWER  
COLORADO RIVER AUTHORITY  
FOR OPERATING PERMITS AND  
TRANSFER PERMITS  
FOR EIGHT WELLS**

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**BEFORE THE  
LOST PINES GROUNDWATER  
CONSERVATION DISTRICT**

**CITY OF ELGIN'S REQUEST FOR CONTESTED CASE HEARING**

Pursuant to Rule 15.1(E) of the Lost Pines Groundwater Conservation District's (the "District's") rules and Section 36.415(b) of the Texas Water Code, City of Elgin, Texas (the "City") respectfully files this Request for Contested Case Hearing ("CCH") to protest the Lower Colorado River Authority's ("LCRA's") eight pending applications for operating permits and transfer permits (cumulatively, "Applications"), and would show as follows:

**I. INTRODUCTION AND BACKGROUND**

The City owns and operates one or more existing groundwater wells drilled into and producing from the Simsboro aquifer, which wells are permitted by the District, and which provide a source of public water supply for the City. As a municipal utility, the City provides public water supply to over 10,000 people. These customers include homeowners and local businesses located within the City's certificated service area and city limits primarily in Bastrop County and a portion in Travis County. The City's certificated service area is defined by Certificate of Convenience ("CCN") No. 10311 issued by the Public Utility Commission of Texas.

This request is sought to protect the City's interests in existing and to-be-drilled wells and groundwater rights in the Simsboro aquifer. The City asserts in this section and the sections below that it meets the District's requirements for contesting and participating in a hearing on LCRA's Applications. In brief summary, the City has the

type of justiciable interest required to protest and qualify as a party to a contested case hearing on LCRA's Applications on account of the City's ownership of Simsboro groundwater rights, groundwater wells and related utility infrastructure, and its interest in permit(s) issued by the District. The City is a proper party to a hearing on these Applications because the City's interests in these wells and groundwater rights will be affected by the Applications, if they are granted. The City's particularized interests and the uniqueness of the impacts of LCRA's proposed pumping on the City's wells are within the regulatory authority of the District to consider and address. The City's interests are not the type of interests common to members of the public.

On August 27, 2018, the District issued notice of a hearing on LCRA's Applications before the District's Board of Directors to be conducted on September 26, 2018, at 7:00 p.m. As set forth in District Rule 15.1(E)(2), in light of the City's and possible other third parties' requests for a contested case hearing, this September 26<sup>th</sup> hearing may serve as a preliminary hearing. It is understood that District Rule 15.1(E)(2) provides that the issues to be discussed at the preliminary hearing are (i) whether a person requesting a CCH has standing to protest the Applications and (ii) whether the person requesting a CCH has raised a justiciable issue related to the Applications. The City will be prepared to introduce evidence and arguments in support of its justiciable interest, how that interest is impacted by LCRA's Applications, and how the District's regulatory jurisdiction related to the City's interests is implicated by these Applications. The City also looks forward to open dialogue among the parties prior to the hearing on the merits to discuss what issues may be agreed upon or settled amicably.

## II. CITY OF ELGIN MEETS THE APPLICABLE STANDARDS TO CONTEST LCRA'S PERMIT APPLICATIONS

The City meets the District's requirements for contesting and participating in a hearing on LCRA's Applications. The City has complied with the filing requirement under the District's rules by timely (1) submitting this written request at least five days prior to the public hearing described in the Rule 15.1(C) notice and (2) asserting its justiciable interest affected by the Board's potential action on the Applications, which justiciable interest is not common to members of the public. The applicable requirements are contained in District Rule 15.1(E), which requires, in pertinent part:

The General Manager, the applicant, or any other person may request a contested case hearing on an Application in writing no later than the 5th day before the date of the public hearing described in the notice required by Rule 15.1.C. ... A person other than the applicant or the General Manager has standing if that person has a personal justiciable interest that is related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and that is affected by the Board's action on the Application, not including persons who have an interest common to members of the public.

See also Tex. Water Code § 36.415(b)(2), which provides that the District shall:

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.

The City's justiciable interest is evidenced by its legal rights and economic interests in its District-issued Simsboro permit(s) and ownership and interests in Simsboro wells, well sites, and utility infrastructure. The City's justiciable interest related to a legal duty, privilege, and power is reflected by (i) its statutory and regulatory

obligations to provide continuous and adequate water utility service within its certificated service area (reference CCN No. 10311), and regulations of the Texas Commission on Environmental Quality set forth in Chapters 290 and 291 within Title 30 of the Texas Administrative Code, and regulations of the Public Utility Commission of Texas set forth in Chapter 24 within Title 16 of the Texas Administrative Code; (ii) its statutory and regulatory obligations related to its District-issued permits; and (iii) and its water utility-related contractual obligations. Each of these justiciable interests has a nexus to LCRA's Applications pending before the District because of the likelihood of adverse impact from LCRA's proposed activities on the City's asserted interests. If granted, LCRA's proposed drilling of and withdrawal from wells located in the Simsboro aquifer will directly impact (1) the availability of groundwater for withdrawal from the City's existing and proposed wells and (2) the productive capacity of the City's existing and proposed wells. If granted, LCRA's pumping will contribute to and result in District-wide permitted withdrawals in excess of the Modeled Available Groundwater, which is expected to cause unacceptable drawdown of Simsboro aquifer levels that compromise the Desired Future Conditions and may require the District to impose restrictions on *existing* permit holders, including the City.

LCRA's Applications seek operating permits that would authorize the aggregated withdrawal from eight wells of 25,000 acre-feet of groundwater from the Simsboro aquifer. Based upon the City's understanding of LCRA's Applications, the City believes that LCRA's proposed withdrawals will have direct, physical impacts on the City's

existing and proposed wells and may cause the District to impose restrictions on *existing* permit holders, including the City.

For all these reasons, the City meets both the District's regulatory standard and the statutory threshold for requesting a contested case hearing and qualifying as a party to a hearing on the Applications. The City's interests are in jeopardy and would be adversely affected by the activities contemplated in LCRA's Applications, and the District has regulatory authority over LCRA's Applications and authority to provide the relief sought by the City to avoid impairment of the City's interests.

In summary, the City will be directly, substantially, and adversely affected, and will suffer significant economic harm and hardship, if the District grants the above-referenced Applications and issues permits consistent with the relief requested by LCRA. For the grounds stated herein, the City respectfully requests that a contested case hearing be held and that the City be named as a party to any hearing on the above-referenced Applications. The City will appear at hearings and be prepared to offer evidence in support of this request.

### III. PARTICIPATION IN DISTRICT'S PRELIMINARY HEARING AND DEVELOPMENT OF PROCEDURAL SCHEDULE

District Rules 15.1 and 15.2 contemplate that a preliminary hearing will be held for the District's Board of Directors to determine whether the hearing is contested and recognize parties, and, if the CCH is conducted by the Board of Directors or Hearings Examiner, the Presiding Officer may consider and adopt a schedule for discovery and subsequent procedures and timeline for a hearing on the merits. The City looks forward

to open dialogue among the parties to discuss what issues may be agreed upon or settled amicably, and to providing responsive feedback to the District's Board of Directors and Presiding Officer.

In the event the District intends to prepare for and address one or more of these issues at the September 26<sup>th</sup> hearing, the City respectfully provides the following comments:

- (1) recognition and alignment of parties

The City seeks the District's designation of the City as a party. The City believes that it is uniquely situated but will be prepared to consider and address party alignment issues at the hearing.

- (2) adoption of a schedule and protocol for conducting discovery

The City seeks a reasonable opportunity to conduct meaningful discovery in this proceeding.

- (3) adoption of a procedural schedule that will govern discovery, dispositive motions, and all other procedure through the final evidentiary hearing, hearing report (if applicable), request(s) for rehearing, and any appeal, and the scheduling of subsequent hearings.

The City will be prepared with its calendar to comment on the procedural schedule.

#### PRAYER

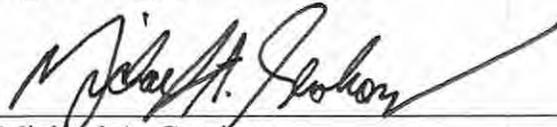
WHEREFORE, premises considered, the City respectfully requests that the District provide the following relief:

- (1) declare the hearing on LCRA's Applications to be contested;
- (2) designate the City a qualified party to a contested case hearing;

- (3) afford the City and all parties to this proceeding an opportunity to conduct meaningful discovery and to develop and present evidence and legal arguments before the Board or Hearings Examiner by setting a docket control schedule with deadlines and a timeline for discovery and an evidentiary hearing;
- (4) deny the Applications, if the Board desires to proceed with an evidentiary hearing, on grounds including but not limited to grounds that the Applications fail to satisfy the relevant criteria in the applicable rules and statutes; and
- (5) such other and further relief as the District may find appropriate and the City to be entitled.

Respectfully submitted,

LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
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(512) 472-0532 fax  
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Michael A. Gershon  
State Bar No. 24002134  
J. Troupe Brewer  
State Bar No. 24082728

ATTORNEYS FOR  
CITY OF ELGIN, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of September, 2018, a true and correct copy of the foregoing document was provided to the following parties by the method shown below each party:

David C. Wheelock, P.E.  
Director, Water Supply Planning  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220  
david.wheelock@lcra.org  
(via first class mail registered and email)

Applicant Lower Colorado River Authority  
(designated representative)

Mr. Tom Oney, General Counsel  
Ms. Lyn Clancy, Managing Associate  
General Counsel and Vice President  
Mr. Gregory A. Graml  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220  
tom.oney@lcra.org  
lyn.clancy@lcra.org  
greg.graml@lcra.org  
(via first class mail registered and email)

Representing Applicant Lower Colorado  
River Authority

Ms. Natasha J. Martin  
Graves, Dougherty, Hearon & Moody, P.C.  
410 Congress Avenue, Suite 2200  
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(via email)

Representing Lost Pines Groundwater  
Conservation District

Mr. James Totten, General Manager  
Lost Pines Groundwater  
Conservation District  
908 Loop 230  
Smithville, Texas 78957  
(512) 360-5448 (fax)  
jtotten@lostpineswater.org  
(via FedEx, fax, and email)

Lost Pines Groundwater Conservation  
District's General Manager

  
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Michael A. Gershon