

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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REGARDING: ORDER NO. 10 - DENYING MOTION FOR SUMMARY DISPOSITION AND CANCELING HEARING

DOCKET NUMBER: 957-17-2582

JUDGE STEPHANIE FRAZEE

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**SOAH DOCKET NO. 957-17-2582**

<b>NEEDMORE WATER LLC</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
<b>v.</b>	<b>§</b>	
	<b>§</b>	<b>OF</b>
<b>BARTON SPRINGS EDWARDS AQUIFER CONSERVATION DISTRICT</b>	<b>§ § § § §</b>	<b>ADMINISTRATIVE HEARINGS</b>

**ORDER NO. 10  
DENYING TRINITY EDWARDS SPRINGS ASSOCIATION'S  
MOTION FOR SUMMARY DISPOSITION,  
GRANTING NEEDMORE WATER, LLC'S MOTION FOR SUMMARY DISPOSITION,  
AND CANCELING HEARING ON THE MERITS**

On February 20, 2018, the parties filed a Joint Motion to Modify the Hearing Schedule.<sup>1</sup> The motion stated that the parties had entered into a Rule 11 agreement on February 16, 2018, that narrowed the issues being contested by the Trinity Edwards Springs Association (TESPA) in this case. Specifically, TESPAs would only be challenging the issues raised in its Motion for Summary Disposition: whether Needmore Water, LLC (Needmore) was eligible to obtain a temporary permit pursuant to HB 3405, Section 4(c) and (d). TESPAs withdrew the prefiled testimony of its witnesses Doug Wierman and Stephan Nelle as part of the Rule 11 agreement.

Also on February 20, 2018, Needmore and TESPAs filed cross-motions for summary disposition. On February 23, 2018, the General Manager of the Barton Springs Edwards Aquifer Conservation District (District) filed a response opposing TESPAs motion. On February 26, 2018, Needmore filed a response opposing TESPAs motion, and on March 2, 2018, TESPAs filed a response opposing Needmores motion. Also on March 2, 2018, the District filed a response in support of Needmores motion. On March 5, 2018, the Administrative Law Judge (ALJ) convened a prehearing conference on the motions.

Having considered the summary disposition motions and responses and arguments presented at the prehearing conference, the ALJ finds that Needmores motion should be granted and that TESPAs motion should be denied for the reasons set forth below.

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<sup>1</sup> The motion was granted in Order No. 9, issued on February 22, 2018.

In its motion, TESPAs argues that Needmore does not meet the conditions for obtaining a temporary permit under HB 3405. Specifically, TESPAs asserts that Needmore was not operating a well nor had it entered into a contract to operate a well at the time HB 3405 became effective. Therefore, according to TESPAs, because the District lacked the authority to issue the temporary permit under HB 3405, the District cannot issue a regular permit to Needmore based on its current application under the HB 3405 process.

Needmore argues in its motion that (1) the statute does not allow a challenge to the temporary permit; (2) TESPAs is too late to challenge the already-granted temporary permit even if such a challenge were allowed; (3) TESPAs has no justiciable interest or standing to challenge the temporary permit; and (4) SOAH has no jurisdiction to hear a challenge to the temporary permit.

The District opposes TESPAs's motion and agrees with Needmore's motion. The District asserts that (1) TESPAs cannot challenge a matter associated with the issuance of the temporary permit; and (2) even if TESPAs could challenge the temporary permit, it was properly granted.

The provisions of HB 3405 do not provide an opportunity to challenge the issuance of a temporary permit. Under Section 4(d) of HB 3405, "[t]he [D]istrict *shall issue* a temporary permit to a person who files an application under Subsection (c) of this section *without a hearing* on the application not later than the 30th day after the date of receipt of the application." (emphasis added). The District's rule at 1.55.2B(2) further provides that if the application meets certain requirements, "the General Manager shall approve and issue a Temporary Permit for the requested permit volume not to exceed the maximum production capacity without notice or hearing and within 30 days of the date of receipt of the application." Accordingly, neither the statute nor the rules provide for notice and hearing on a temporary permit.

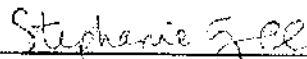
However, under Section 4(e) of HB 3405, a hearing may be held on the conversion of the temporary permit to a regular permit. According to that section, the District shall issue an order granting the regular permit unless the District finds that authorizing groundwater production in

the amount set forth in the temporary permit will cause: “(1) a failure to achieve the applicable adopted desired future conditions for the aquifer; or (2) an unreasonable impact on existing wells.”

This proceeding is a hearing on the conversion of Needmore’s temporary permit to a regular permit. The parties have agreed that TESPAs is not contesting either of the issues set forth in Section 4(e) of HB 3405. Rather, TESPAs has limited its challenge to whether the District should have issued the temporary permit to Needmore. As the purpose of this hearing is limited to whether issuance of a regular permit will cause a failure to achieve the applicable adopted desired future conditions for the aquifer or an unreasonable impact on existing wells, there are no genuine issues of material fact remaining in this proceeding because TESPAs has limited its challenge to the issuance of the temporary permit.

Accordingly, Needmore’s motion for summary disposition is **GRANTED**, and TESPAs’s motion for summary disposition is **DENIED**. The hearing on the merits scheduled for July 19-20, 2018, is **CANCELED**. A proposal for decision on summary disposition will be issued.

**SIGNED June 6, 2018.**

  
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STEPHANIE FRAZEE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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**AGENCY:** Barton Springs Edwards Aquifer (BSEA)  
**STYLE/CASE:** NEEDMORE WATER LLC FOR HB 3405 REGULAR PERMIT  
**SOAH DOCKET NUMBER:** 957-17-2582  
**REFERRING AGENCY CASE:**

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ STEPHANIE FRAZEE**

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