

SOAH DOCKET NO. 957-17-2582

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

**ORDER NO. 11
DISMISSING CASE**

On July 23, 2018, the undersigned Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) on Summary Disposition in this case, which resolved all contested matters based on evidence and arguments establishing that the substantive issues over which the State Office of Administrative Hearings (SOAH) had jurisdiction were no longer contested by any party to the case.

On August 6, 2018, Needmore Water LLC (Needmore) submitted a letter inquiring as to when the ALJ would issue a PFD recommending that the Barton Springs Edwards Aquifer Conservation District (District) issue a regular permit to Needmore. On August 7, 2018, the District filed a Motion to Recommend Permit Issuance, which requested that the ALJ issue an amended PFD recommending that the District issue the regular permit to Needmore. On August 7, 2018, Trinity Edwards Springs Protection Association (TESPA) filed exceptions to the PFD. On August 22, 2018, Needmore filed its reply to TESPA's exceptions and a request that the ALJ grant the District's motion and modify the PFD to recommend issuance of the regular permit. That same day, the District filed its reply to TESPA's exceptions. The ALJ issued a letter addressing the parties' exceptions and replies on September 10, 2018. In that letter, the ALJ set forth her reasons for declining to amend the PFD.

On October 30, 2018, the District Board of Directors (Board) issued "An Order Remanding Application of Needmore Water LLC" to the ALJ. The Board ordered the Application remanded to the ALJ "for the limited purpose of reopening and further developing the evidentiary record" to facilitate the ALJ's issuance of a revised PFD that includes additional

findings of fact and conclusions of law, including the ALJ's recommendations for Board action on the Application. In the opinion of the Board, these additional elements of the PFD are required by District Rule 4-9.8(B) and Texas Water Code § 36.410(b)(3) despite the lack of a contested case on the issuance of a regular permit.

The contested case at SOAH arose from TESPAs challenge to the conversion of Needmore's temporary permit to a regular permit. In February 2017, SOAH accepted jurisdiction in the contested case in accordance with Section 4(e) of House Bill 3405, which provides that a hearing may be held on the conversion of a temporary permit to a regular permit.¹

The original subject matter of the contested case at SOAH was based on the issuance of a regular permit as requested in Needmore's Application. Following the parties' Rule 11 agreement of February 16, 2018, TESPAs withdrew the prefiled testimony of two of its witnesses and limited its challenge to whether the District should have issued a temporary permit to Needmore. As the substantive challenges to the regular permit were withdrawn from the case, and the issuance of a temporary permit and legal challenges to the constitutionality of HB 3405 are not issues upon which a contested case hearing may be held at SOAH, summary disposition was granted. The parties have been advised of the ALJ's determination on the various arguments presented after issuance of the PFD that SOAH declines to amend the PFD, and that the District appears to have all necessary legal authority to make its own determination on the issue of whether to grant the regular permit.² SOAH is not empowered to issue advisory opinions for the convenience of the parties, and the Board's remand order does not otherwise create such authority or jurisdiction where none exists.³

¹ H.B. 3405, 84th R.S. (2015).

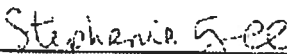
² ALJ's Exceptions Letter of September 10, 2018. *See also*, Section 4(e) of H.B. 3405 ("the district shall issue an order granting the regular permit. . ."); Tex. Water Code, §36.4165 ("the board has authority to make a final decision on consideration of a PFD issued by an administrative law judge).

³ The ALJ declines to opine on whether the Board's attempted remand is even authorized as a general matter. *See, Banda v. Texas Board of Nursing*, 2018 WL 237641 (Ct. App.—Corpus Christi-Edinburg 2018, no pet.) (Finding that remand to SOAH absent express statutory authority amounted to an improper exercise of additional power).

For the reasons set forth, the ALJ has respectfully determined that she lacks authority to take further action in this case and declines to do so.

Accordingly, **IT IS ORDERED** that all motions filed in this case after issuance of the PFD are **DENIED** as moot, and this matter is hereby **DISMISSED** from the Docket of SOAH.

SIGNED April 10, 2019.



STEPHANIE FRAZEE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS