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**Via email to [bseacd@bseacd.org](mailto:bseacd@bseacd.org)**

Barton Springs Edwards Aquifer Conservation District  
Attn: Board of Directors  
1124 Regal Row  
Austin, Texas 78748

Re: SOAH Docket No. 957-18-4985; Application of Electro Purification, LLC, for Well Modification Authorization and Production Permit.

Dear BSEACD Board:

As you are aware, Electro Purification LLC (“EP”) recently filed a Notice of Nonsuit (the “Nonsuit”) in SOAH Docket No. 957-18-4985 (the “SOAH Proceeding”). The SOAH Proceeding was scheduled to consider EP’s Production Permit Application (the “Application”) submitted to the Barton Springs Edwards Aquifer Conservation District (the “District”). Hays County, TESPAs and many other concerned landowners protested the Application. The Administrative Law Judge (“ALJ”) granted the Nonsuit on February 4, 2021 pursuant to SOAH procedural rule 1 TEX. ADMIN. CODE § 155.503(a). About a month later, on March 9, 2021, the District’s General Manager (the “GM”) returned the Application to EP after determining that EP withdrew its Application once EP’s requested Nonsuit was granted. TESPAs believes the GM’s action was consistent with SOAH Rule 155.503(a), and TESPAs encourages the Board to acknowledge the GM’s action and take no further action.

The District’s Rules do not expressly address what happens when an applicant nonsuits an application while it is pending before SOAH, and the District’s Rules certainly do not preclude the GM from returning an application once the SOAH Proceeding is nonsuited. The GM’s decision is

governed by SOAH’s nonsuit rule, SOAH Rule 155.503(a), and the Texas Rule of Civil Procedure (“TRCP”) 162. Under SOAH Rule 155.503(a), a party may nonsuit at “any time before the date set by the judge for close of the record.” SOAH Rule 155.503(a) is silent whether a nonsuit constitutes withdrawal of the application or remands it back to the referring agency for further disposition. TESPAs is unaware of any precedent addressing SOAH Rule 155.503(a), but a nonsuit under the TRCP 162 extinguishes a pending matter and returns the parties “*in the same positions as before the filing of the suit.*” See *Hagberg v. City of Pasadena*, 224 S.W.3d 477, 484 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (emphasis added).

EP *voluntarily* chose not to proceed with the SOAH hearing. The Nonsuit must return all parties to their respective positions “before the suit was filed.” *Id.* In an administrative legal proceeding such as this one, the filing of the Application initiated the dispute between parties which is the equivalent of filing a lawsuit in a civil matter. The GM correctly deemed the Application withdrawn so that all parties were returned to their respective positions prior to the dispute.

EP claims it filed the Nonsuit because it needed to evaluate the GM’s revised draft permit. However, EP routinely requested numerous abatements of the SOAH proceeding combining for more than 18 months of delay. This time, instead of requesting additional time from the ALJ, EP filed the Nonsuit, rendering the Application moot and withdrawn. For these reasons, TESPAs respectfully requests the Board acknowledge the GM’s decision to return the Application and take no further action. Alternatively, if the Board determines formal action is necessary, then TESPAs respectfully requests the Board adopt the GM’s action and deem EP’s Application withdrawn.

Thank you,  
*/s/ Adam Friedman*  
Adam Friedman  
Attorney for TESPAs

cc: Vanessa Escobar, General Manager (via email to [vescobar@bseacd.org](mailto:vescobar@bseacd.org))  
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