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December 13, 2010

Via E-Mail

Christiaan Siano, Staff Attorney
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Environmental Law Division, MC 173
P.O. Box 13087
Austin, Texas 78711-3087

Re: No. 2010-1611-MIS Before the Texas Commission on Environmental Quality;
Request for Inquiry filed by Mesa Water, L.P.

Dear Mr. Siano:

Mesa Water, L.P. ("Mesa") files this Supplement to its Reply to the Response of the Executive Director ("ED"), to advise the Commission of certain developments impacting this matter and further illustrating the incorrectness of the Executive Director's position.

As noted previously, the ED argues that the issue of reasonableness of the desired future conditions ("DFCs") adopted by GMA 1 has already been determined by TWDB. As noted in Mesa's Reply, the position of the ED has been contradicted by TWDB, which says that it issued no ruling, order or decision related to the reasonableness of the DFCs in question. Indeed, TWDB took this position in its recently filed reply brief in *Mesa Water, L.P. and G&J Ranch, Inc. v. Texas Water Development Board*, No. D-1-GN-10-000819 in the 201st Judicial District Court in and for Travis County, Texas.

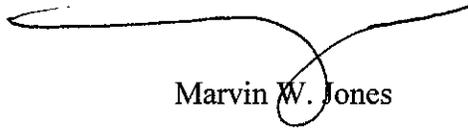
In its Reply in support of its Plea to the Jurisdiction, TWDB characterized its action with respect to the questions raised there by Mesa as being in the nature of "comments," "advice" and "non-recommendations." TWDB there stated that it was merely a scientific advisor and that its role in the appeals process under Texas Water Code § 36.108 did not arise to the level of a "ruling, order or decision."

On December 9, 2010, TWDB's Plea to the Jurisdiction was heard by the Court in Travis County. Following lengthy argument, the Court agreed with TWDB that its action, however characterized, did not have finality with respect to the DFCs adopted as part of the planning process under § 36.108.

Accordingly, there has now been a judicial determination that TWDB did not make a ruling, order or decision in connection with the Mesa petition. That being true, the ED's

assertion that the question of reasonableness is within the exclusive province of the TWDB and that it has already ruled on that question is simply wrong. No decision, order or ruling has been made that would have a precedential, *res judicata*, or deissue preclusion effect. The Commission should, therefore, undertake the requested review.

Sincerely,



Marvin W. Jones

MWJ:db

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