

BEFORE THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS

IN THE MATTER OF: NRS18.189)	DIVISION OF WATER RESOURCES CASE NUMBER WPC20-0008
)	
)	
ROGERS GROUP, INC.,)	
)	
<i>Petitioner,</i>)	
)	
v.)	
)	DOCKET NUMBER 04.30-200382J
TENNESSEE DEPARTMENT OF)	JUDGE RICHARD M. MURRELL
ENVIRONMENT AND CONSERVATION,)	
)	
)	
<i>Respondent.</i>)	

JOINT STATEMENT

Rogers Group, Inc. and the Department of Environment and Conservation, by and through the undersigned counsel, present this Joint Statement as requested by Judge Murrell.

After the Department denied Rogers Group’s application for an Aquatic Resources Alteration Permit, Rogers Group appealed the denial to Board. (Tech. Rec. at 1.) The matter was then assigned to Administrative Judge Mary M. Collier by the Administrative Procedures Division to sit alone for the Water Board. The Department subsequently filed a Motion for Summary Judgment based on the argument that Rogers Group lacked standing because it did not own the bed of the Tennessee River. (Tech. Rec. at 41.) The Department’s motion, however, did not address the merits of the Department’s permit denial. The Administrative Judge entered an Initial Order granting the Department’s motion and dismissing the contested case. (Tech. Rec. at 265.) Rogers Group timely appealed the Initial Order for review by the Board. (Tech. Rec. at 279.)

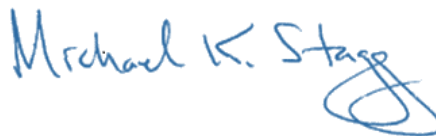
In the meantime, Rogers Group and the Department worked together to have legislation introduced that would resolve the ownership issue and provide some revenue to the State. To that

end, Rogers Group and the Department filed a joint motion to continue oral argument on Rogers Group's appeal of the Initial Order. The reason was this: "Senate Bill 0407/House Bill 0523 currently pending in the Tennessee General Assembly would resolve the underlying issue of ownership of sand and gravel once severed from the bed of navigable rivers in Tennessee. If adopted, this law would alter the basis for the initial order, resulting in a likely need for a contested case hearing on the merits."

Subsequently, the Tennessee General Assembly passed the legislation, and Governor Lee signed it into law on May 5, 2023. The new statute effectively resolved the ownership issue and moots the basis for the Initial Order and the appeal thereof. Consequently, the Department and Rogers Group plan to file with the Board a joint motion to vacate the Initial Order and reinstate the contested case to proceed in front of an administrative judge on the substantive merits. Counsel will attend the hearing scheduled on June 20, 2023, to present their Joint Motion.

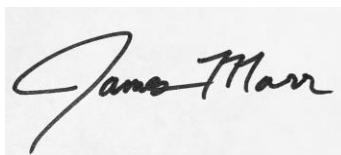
In the interim, counsel are available to discuss this matter if Judge Murrell wishes.

Respectfully submitted this 7th day of June, 2023.



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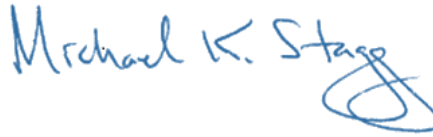
TN SOS-APD Wed, Jun 07, 2023 03:05 PM : 3 of 4 pages received

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing JOINT STATEMENT has been sent to the following counsel of record by electronic mail by prior written consent, on this 7th day of June, 2023:

James Marr
Associate General Counsel
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Attorney for Tennessee Department of Environment and Conservation



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**JOINT MOTION TO VACATE THE INITIAL ORDER
AND REINSTATE THE CONTESTED CASE**

Rogers Group, Inc. and the Department of Environment and Conservation (the “Department”), by and through the undersigned counsel, jointly move the Board of Water Quality, Oil, and Gas (the “Board”) to vacate the Initial Order and reinstate the contested case to proceed in front of an administrative judge on the substantive merits.

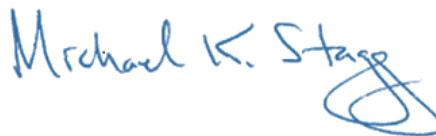
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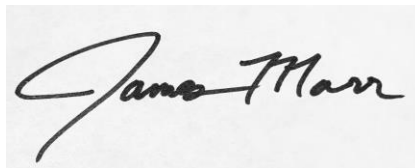
Subsequently, the Tennessee General Assembly passed the legislation, and Governor Lee signed it into law on May 5, 2023. The new statute effectively resolved the ownership issue and moots the basis for the Initial Order and the appeal thereof. Consequently, the Department and Rogers Group jointly move the Board to vacate the Initial Order and reinstate the contested case to proceed in front of an administrative judge on the substantive merits. Counsel will attend the hearing scheduled on June 20, 2023, to present their Joint Motion. A proposed order is filed herewith.

Respectfully submitted this 7th day of June, 2023.



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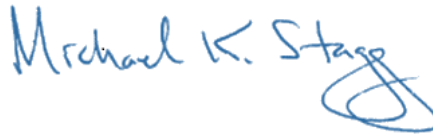
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The undersigned hereby certifies that a true and correct copy of the foregoing JOINT MOTION TO VACATE THE INITIAL ORDER AND REINSTATE THE CONTESTED CASE has been sent to the following counsel of record by electronic mail by prior written consent, on this 7th day of June, 2023:

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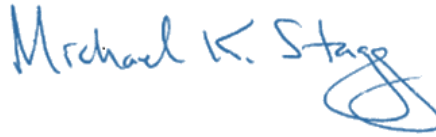
Attorney for Tennessee Department of Environment and Conservation



Michael K. Stagg

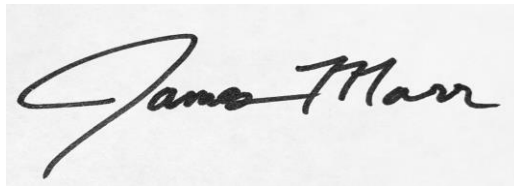
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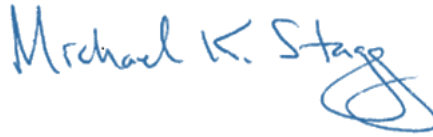
*Attorney for Tennessee Department of Environment
and Conservation*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing proposed ORDER GRANTING JOINT MOTION TO VACATE THE INITIAL ORDER AND REINSTATE THE CONTESTED CASE has been sent to the following counsel of record by electronic mail by prior written consent, on this 7th day of June, 2023:

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