

**LOST PINES GROUNDWATER CONSERVATION DISTRICT**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**ON APPLICATIONS OF FORESTAR (USA) REAL ESTATE GROUP, INC.**  
**FOR OPERATING PERMITS AND TRANSPORT PERMITS**

**FINDINGS OF FACT**

**PROCEDURAL HISTORY**

1. In December 2009, Sustainable Water Resources L.P. submitted applications to the District for 10 wells in Lee County seeking authorization to withdraw an aggregate of 45,000 acre-feet per year from the Simsboro aquifer to be used for drinking water supply purposes in Bastrop, Hays, Lee, Travis and Williamson Counties (the "Applications").
2. By letter dated August 13, 2012, Forestar (USA) Real Estate Group, Inc. ("Applicant") notified the District that it had purchased all of the assets of Sustainable Water Resources L.P., including the Applications.
3. On January 8, 2013, the General Manager sent a letter to Applicant notifying the Applicant that the District intended to treat the Applications as applications for Well Registration, Operating Permits, and Transport Permits under the District rules in effect as of January 1, 2013. The letter also requested additional information on the Applications.
4. On January 17, 2013, Applicant sent a letter to the General Manager agreeing to the treatment of the Applications as applications for Well Registration, Operating Permits, and Transport Permits under the District rules in effect as of January 1, 2013, and submitted the additional information requested in the General Manager's letter.
5. By letter dated February 20, 2013, the General Manager: (a) notified the Applicant that the Applications were Administratively Complete; and (b) provided the Applicant with the notice described in District Rule 14.3.C, setting the Applications for a public hearing on March 20, 2013.
6. By letter dated February 21, 2013, the General Manager provided the Applicant with a written summary of the General Manager's recommendation on the Applications to the Applicant, pursuant to District Rule 14.3.B(2).
7. On February 25, 2013, Applicant mailed the notice of public hearing as provided in District Rule 14.3.C(3)(a) and provided the District with proof of the mailing of notice on March 7, 2013.
8. On February 28, 2013, Applicant published the notice of public hearing in The Bastrop Advertiser, the Lexington Leader, and the Giddings Times and News and provided the District with proof of that publication on March 7, 2013.

9. The Board of Directors of the District (the "Board") held a public hearing on the Applications at 7:00 p.m. on March 20, 2013, at the Bastrop City Hall in Bastrop, Texas.

10. The agenda for the March 20 Board meeting provided for: "Consideration and possible action on applications of Forestar (USA) Real Estate Group, Inc. for Operating Permits and Transfer Permits for Well Nos. 1-10."

11. The Board did not receive a request for a contested case hearing on the Applications before the March 20 public hearing.

12. The Board heard comments on the Applications at the March 20 public hearing, then the President closed the public hearing.

13. On April 10, 2013, Aqua Water Supply Corporation filed a request for a contested case hearing on the Applications on April 10, 2013.

14. On May 7, 2013, the City of Giddings filed a request for a contested case hearing on the Applications.

15. On May 8, 2013, Environmental Stewardship filed a request for a contested case hearing and/or a request for party status in any contested case hearing on the Applications.

16. On May 9, 2013, Andrew Meyer, Bette Brown, Rhonda Brown Hosea, Phillip A. Brown, Darwyn Hanna, Frank D. Brown, Madeline Brown Stifflemire, and Walter Richard Brown filed requests for party status in any contested case hearing on the Applications.

17. On May 15, the City of Giddings withdrew its request for a contested case hearing on the Applications.

18. On May 15, 2013, the Board held a hearing to determine whether the requests for contested case hearings on the Applications filed by Aqua Water Supply Corporation and others were timely filed under the District Rules.

19. At the hearing on May 15, 2013, the Board voted to deny the Aqua Water Supply Corporation's and all other requests for contested case hearing on the ground that they were not timely filed under the District Rules.

#### **COMPLETENESS OF APPLICATION**

20. The Applications included all of the information required by Texas Water Code section 36.113 and District Rules 4.2, 5.1, and 6.2.

#### **DEDICATION TO BENEFICIAL USE**

21. Applicant proposes to sell water for municipal purposes to customers located in Bastrop, Hays, Lee, Travis and Williamson Counties.

22. Regional water plans demonstrate the following needs for additional water for municipal purposes within those counties:

(a) The 2011 Region K and Region L plans indicate that Hays County will need approximately 35,600 acre-feet per year of additional municipal water supply in 2060.

(b) The 2011 Region G and Regional K Plans predict a 33,797 acre-feet per year municipal water shortage in Williamson County in 2030 and a 112,609 acre-feet per year shortage in 2060.

(c) The 2011 Region K plan predicts an 11,053 acre-feet per year municipal water shortage in Travis County in 2020, a 13,897 acre-feet per year shortage in 2030, a 16,964 acre-feet per year shortage in 2040, a 50,264 acre-feet per year shortage in 2050, and an 85,794 acre-feet per year shortage in 2060.

(d) The 2011 Region K plan predicts an approximately 2,392 acre-feet per year municipal water shortage in Bastrop County in 2020, an approximately 5,722 acre-feet per year shortage in 2030, an approximately 12,731 acre-feet per year shortage in 2040, an approximately 18,083 acre-feet per year shortage in 2050, and an approximately 25,288 acre-feet per year shortage in 2060.

(e) The 2011 Region G plan predicts a 480 acre-feet per year municipal water shortage in Lee County in 2030 and a 797 acre-feet per year shortage in 2060.

23. Applicant submitted a non-binding letter of intent dated August 1, 2011 for the negotiation and execution of a Wholesale Water Supply Contract on or before September 30, 2013, pursuant to which Applicant would deliver 25,000 to 45,000 acre-feet of water per year to Hays County.

24. Applicant submitted a non-binding letter of intent dated January 13, 2013 for the negotiation and execution of a Water Supply Contract on or before June 30, 2013, pursuant to which Applicant would supply 1,000 to 5,000 acre-feet of water per year to the Dripping Springs Water Supply Corporation in Hays County.

25. Special Condition (2) of the Operating Permit for each of the proposed wells provides:

Within 365 days from the date of issuance of the permit, Permittee shall submit to the District a binding contract to provide water in the full authorized annual withdrawal amount for the authorized purpose of use to one or more End Users in the authorized places of use. For purposes of this section, a "binding contract" means a contract that sets forth in detail the terms, provisions and conditions for the sale and purchase of water produced under this permit and that is binding and will continue in effect for so long as may be agreed to by the parties. If Permittee fails to submit a binding contract or contracts in the aggregated annual withdrawal amount of 12,000 acre-feet per year within 365 days from the date of issuance of

this permit, then the aggregated annual withdrawal amount in this permit shall be automatically reduced to the amount for which Permittee has submitted a binding contract or contracts; and the General Manager is authorized to issue an amendment to this permit reflecting the reduced amount.

#### **CONSISTENCY WITH DISTRICT MANAGEMENT PLAN**

26. The Operating Permits are consistent with the District Management Plan.

#### **WATER CONSERVATION**

27. The Applicant has submitted a water conservation plan that provides for conservation of water in the Applicant's operation of the wells and water transportation facilities.
28. Special Condition (3) of the Operating Permit provides:

At the time that Permittee submits a binding contract with an End User to the District, Permittee shall provide the District with the End User's water conservation plan and drought contingency plan, which must comply with the relevant provisions of the Texas Water Code and rules of the Texas Commission on Environmental Quality or successor agency.

29. Standard permit provision (2) provides: "Water withdrawn under the permit must be put to beneficial use at all times, and operation of the permitted well in a wasteful manner is prohibited."

#### **WATER QUALITY**

30. The Applicant has agreed to use reasonable diligence to protect groundwater quality.

#### **WELL PLUGGING**

31. The Applicant has agreed to follow the well plugging guidelines at the time of a well's closure.

#### **LONG-TERM MANAGEMENT TO ACHIEVE DESIRED FUTURE CONDITION**

32. Groundwater Management Area 12 has adopted and the Texas Water Development Board has approved the following Desired Future Condition ("DFC") for the Simsboro aquifer in the District: a District-wide average drawdown between January 2000 and December 2059 of 237 feet.

33. The District Management Plan adopts the following county DFCs for the Simsboro aquifer: (a) a Bastrop County-wide average drawdown between January 2000 and December 2059 of 145 feet; and (b) a Lee County-wide average drawdown between January 2000 and December 2059 of 345 feet.

34. The Central Queen City-Sparta Groundwater Availability Model ("GAM") was developed by the Texas Water Development Board ("TWDB") to estimate the regional impact of the withdrawal of groundwater from the Simsboro and other aquifers.

35. The GAM is the best tool available for estimating the regional drawdown of water levels in the Simsboro aquifer as a result of groundwater withdrawals within the District, although it has limitations.

36. Using the GAM, the TWDB executive administrator has determined that the Modeled Available Groundwater for the Simsboro aquifer is: 29,556 acre-feet per year in 2010; 32,731 acre-feet per year in 2020; 31,362 acre-feet per year in 2030; 34,916 acre-feet per year in 2040; 36,544 acre-feet per year in 2050; and 37,249 acre-feet per year in 2060.

37. The TWDB executive administrator's estimates of the current and projected amount of groundwater produced under exemptions granted by District Rules and Texas Water Code section 36.117 for all aquifers in the District are: 11,666 acre-feet per year in 2010; 13,022 in 2020; 19,876 acre-feet per year in 2030; 20,423 acre-feet per year in 2040; 20,796 acre-feet per year in 2050; and 21,162 acre-feet per year in 2060.

38. The District has authorized the withdrawal of 50,638 acre-feet per year from the Simsboro aquifer under permits previously issued.

39. The District's hydrologist ran the GAM assuming that 10,000 acre-feet per year will be withdrawn from Applicant's 10 proposed wells in every year from 2014 to 2060, and that withdrawals from existing wells completed in the Simsboro aquifer will be as follows: (a) 20,298 acre-feet per year in 2010; (b) 28,184 acre-feet per year in 2020; (c) 31,240 acre-feet per year in 2030; (d) 34,295 acre-feet per year in 2040; (e) 37,361 acre-feet per year in 2050; and (f) 40,406 acre-feet per year in 2060.

40. The 2010 withdrawal of 20,298 acre-feet per year is a reasonable estimate, based on District records, of the amount of groundwater that was actually produced from the Simsboro aquifer in 2010 under existing District Operating Permits and under exemptions granted by District Rules and Texas Water Code section 36.117.

41. The 2020, 2030, 2040, 2050 and 2060 projected withdrawals are consistent with the withdrawals authorized under existing District Operating Permits and the 2012 State Water Plan Projected Net Water Demands within the District summary in the District Management Plan.

42. The 2020, 2030, 2040, 2050 and 2060 projected withdrawals are a reasonable estimate of the amount of groundwater that may actually be produced from the Simsboro aquifer under existing District Operating Permits and under exemptions from permitting granted by the District Rules and Texas Water Code section 36.117.

43. The District hydrologist also ran the GAM assuming that 20,000 acre-feet per year will be withdrawn from Applicant's 10 proposed wells in every year from 2014 to 2060, plus the same 2020, 2030, 2040, 2050 and 2060 projected withdrawals.

44. The average drawdown in feet projected by these two model runs in 2060 are as follows:

	<b>Bastrop County</b>	<b>Lee County</b>	<b>District-wide</b>
10,000 afy + projected 2010-2060 pumping	140	336	232
20,000 afy + projected 2010-2060 pumping	150	380	258

45. The two GAM runs project that the current DFC for the Simsboro aquifer can be achieved if Applicant is authorized to withdraw something more than 10,000 acre-feet per year, but substantially less than 20,000 acre-feet per year.

46. Consistent with District Rule 9.1, Special Condition (4) of the Operating Permit for each of the proposed wells provides:

This permit is issued subject to any future production limits adopted by the District under the District Rules.

47. District Rule 9.1 provides: "To accomplish the purposes of Texas Water Code chapter 36, and to achieve the stated purposes and goals of the District, including managing the sustainability of the aquifers and preventing significant, sustained water-level declines within the aquifers, the district shall manage total groundwater production on a long-term basis to achieve the applicable Desired Future Condition. The District may establish production limits on all permits for this purpose following the procedures in Rule 14.1 and 14.2. All Operating Permits are issued subject to any future production limits adopted by the District under this Rule."

#### **EFFECT ON EXISTING WATER RESOURCES AND PERMIT HOLDERS**

48. The nearest permitted well completed in the Simsboro aquifer is located approximately 10 miles from one of Applicant's proposed wells.

49. The nearest exempt registered well completed in the Simsboro aquifer is located approximately 10 miles from one of Applicant's proposed wells.

50. Although the GAM is not intended to predict drawdowns at a particular point, the two model runs discussed in Findings of Fact Nos. 39-45 project that the drawdown in the area of the nearest permitted well and the nearest exempt registered well will be approximately 200 feet in December 2059.

51. The District's hydrologist ran the GAM assuming that 11,250 acre-feet will be withdrawn from the Applicant's wells and that there will be no other withdrawals in the Simsboro aquifer in

order to determine the amount of drawdown caused by withdrawal from the Applicant's proposed wells only.

52. Although the GAM is not intended to predict drawdowns at a particular point, this model run projects that drawdowns in the area of nearest permitted well and nearest exempt registered well caused by Applicant's withdrawal of 11,250 acre-feet per year will be 0 to 50 feet in December 2059.

53. Withdrawal of 12,000 acre-feet of water per year from the proposed wells will not unreasonably affect existing permitted wells or existing exempt registered wells.

54. In adopting a DFC for the Simsboro aquifer, Groundwater Management Area 12 and the District considered, as required by Texas Water Code section 36.108(c), the hydrological conditions of the Simsboro aquifer, other environmental impacts of the adoption of the DFC, including impacts on spring flow and other interactions between groundwater and surface water, and the impact on private property rights.

55. Withdrawal of 12,000 acre-feet per year from the proposed wells will not unreasonably affect existing groundwater and surface water resources, because the GAM predicts that the current DFC for the Simsboro aquifer can be achieved if Applicant is authorized to withdraw that amount from the proposed wells.

#### **OTHER PERMIT CONDITIONS AND LIMITATIONS**

56. The Operating Permits have a term of five years.

57. District Rule 5.7.C(6) provides that, in deciding whether to grant an application for renewal of the Operating Permit, deny it, or approved renewal with amended terms and conditions, the Board may consider, among other things, "whether any changes in the District's Desired Future Conditions or the District Management Plan that were approved after the permit was granted require any changes in the permit conditions."

#### **COMPLIANCE HISTORY**

58. The Applicant does not have a history of non-compliance with District Rules or the Water Code.

#### **CONCLUSIONS OF LAW**

1. District Rule 14.3.D. provides that: "A request for a contested case hearing on the Application, to be conducted under Rule 14.4, must be made in writing and filed with the District no later than the 5<sup>th</sup> day before the date of the Board meeting at which the Application will be considered."

2. The Applications were considered at the Board meeting held on March 20, 2013.

3. The requests for a contested case hearing on the Applications were not timely under the District rules because they were not filed five days before March 20, 2013.
4. The Applications conform to the requirements prescribed by chapter 36 of the Texas Water Code and the District Rules.
5. Under the terms and conditions of the Operating Permits, the proposed use of water will be dedicated to a beneficial use.
6. Under the terms and conditions of the Operating Permits, the proposed use of water is consistent with the District Management Plan.
7. Under the terms and conditions of the Operating Permits, Applicant will be required to avoid waste and achieve water conservation.
8. Under the terms and conditions of the Operating Permits, Applicant will be required to follow well plugging guidelines at the time of the closure of the proposed wells.
9. Under the terms and conditions of the Operating Permits, Applicant will use reasonable diligence to protect groundwater quality.
10. Granting the Applications under the terms and conditions provided in the Operating Permit is consistent with the District's duty to manage total groundwater production on a long-term basis to achieve the applicable DFC, considering: the Modeled Available Groundwater determined by the TWDB executive administrator; the TWDB executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by District Rules and Texas Water Code section 36.117; the amount of groundwater authorized under permits previously issued by the District; a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the District; and yearly precipitation and production patterns.
11. Under the terms and conditions of the Operating Permits, the proposed use of water does not unreasonably affect existing groundwater and surface water resources or existing permit holders.
12. The terms and conditions of the Operating Permit prevent waste, achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells.
13. The Applicant does not have a history of non-compliance with District Rules or the Texas Water Code.
14. The terms and conditions of the Transport Permits are consistent with the Texas Water Code and District Rules.