



December 16, 2013

Delivered by Hand at the December 16, 2013, Forestar Permit Application Rehearing.

Board of Directors  
Lost Pines Groundwater Conservation District  
908 Texas 230 Loop  
Smithville, TX 78957

**Re: Forestar (USA) Real Estate Group, Inc., Rehearing:**

- 1. Provide new material into the administrative record**
- 2. Respond to motion for rehearing letter dated August 6, 2013**
- 3. Submit previously provided ES documents into the record**

Dear Board:

Environmental Stewardship (ES) is providing the following comments to the Board of Directors (Board) in response to Forestar's Motion for Rehearing letter dated August 6, 2013, to provide new materials into the administrative record, and to enter documents into the administrative record that have previously been provided by Environment Stewardship. Though the current proceedings do not provide adequate opportunity for members of the public to properly present evidence and testimony to the Board, we are providing this information in an effort to provide the Board with a more complete picture than that presented by Forestar alone.

Before entering a more detailed discussion, ES finds it important to note that the District's decision to limit Forestar's permit to 12,000 acre-feet per year is the decision most consistent with the District's Management Plan as last revised September 19, 2012.<sup>1</sup> By that Plan, the District stated that the District "will endeavor to manage groundwater to meet demands on a sustainable basis, by which the District means development, use, and reasonable long-term management of groundwater resources so that those resources can continue to be used by future generations."<sup>2</sup> The District's limitation on Forestar's permit furthers this goal by balancing Forestar's requested quantity of water with the current and anticipated needs for groundwater. The District's Management Plan further notes that, "Groundwater resources within the District are of vital importance to the residents and businesses in Bastrop and Lee counties and effectively constitute the only source of water available for most of the District."<sup>3</sup> The limitations imposed upon Forestar's application to send water outside of the District reflect the importance of this groundwater to Bastrop and Lee Counties. This approach maintains the viability of groundwater supply in the two counties.<sup>4</sup> Further, the District's Management Plan recognizes the District's discretion to consider unique situations or local conditions and the potential for adverse economic and environmental circumstances.<sup>5</sup> As discussed in previous correspondence from Environmental Stewardship, and as discussed below, the economic and environmental impacts of granting Forestar's full request for the withdrawal of 45,000 acre-feet per year justifies reducing the permitted amount to 12,000 acre-feet per year. Furthermore, the District's Management Plan incorporates the District Desired Future Conditions,

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<sup>1</sup> To the degree that Forestar's Application constitutes an application for a new permit or permit amendment by a historic user, the discussion in this paragraph demonstrates some ways in which the District's decision addresses criteria set forth

<sup>2</sup> LPGCD Management Plan, p. 1.

<sup>3</sup> LPGCD Management Plan, p. 2.

<sup>4</sup> LPGCD Management Plan, p. 2, Policy No. 1.

<sup>5</sup> LPGCD Management Plan, p. 3.

and the Modeled Available Groundwater estimate derived from those conditions.<sup>6</sup> The imposition of a limitation on Forestar's permit in order to enable the District to meet these long-term goals is an appropriate means of implementing the District's Management Plan.

The application of this limit to Forestar's application premised on the principles set forth in the District's Management Plan is consistent with the issuance of future permits because the principles set forth in the Management Plan from which this limitation is derived will continue to apply to all applications considered by the District, just as the District may continue to limit permits in consideration of the then-effective DFC.<sup>7</sup> Furthermore, the limitation imposed by the District on Forestar's application is reasonably necessary to protect existing uses. Those existing uses for municipal, livestock, irrigation, and mining purposes are set forth in the District's Management Plan.<sup>8</sup> The limitation imposed on Forestar's permit is necessary both to protect those uses as currently exercised, and the continued exercise of those uses as reflected by the projected water needs for each use in the future.<sup>9</sup>

Many of the above-cited issues were discussed in ES's letter to the Board dated April 11, 2013. ES is re-submitting its April 11, 2013 letter<sup>10</sup> (Attachment A) that 1) outlines the regulatory authority of the Board, and 2) discusses the applicable sections of the Texas Water Code, as amended in 2011 by Senate Bill 737, the District's Management Plan, and factors for the District to consider in applying Appendix A which relate to Section 2, Policies 1 and 2 of the Plan.

## Detailed Discussion

1. As ES has previously noted, the DFC process provides the most sound legal and technical means to adaptively manage groundwater resources within the District going forward.

By its motion for rehearing, and recent proposals, Forestar has attempted to claim that a phased approach provides a more technically sound means of regulating groundwater than the District's current position. Nothing could be further from the truth. The proper way for the District to premise its permitting decisions on sound science is for the District to implement the DFC as established and revised based on an iterative process that comprehensively accounts for the various demands on the District's groundwater and best technical information available. The Board has adopted this process by granting Forestar a permit consistent with the quantity of water currently available under the existing DFC. As the DFC is revised based on improved technical information, the District has the option of granting a subsequent application by Forestar for additional water if that water is available and issuance of a permit is appropriate in light of the various statutory and regulatory factors that must be considered in that decision.

For the District to commit itself to the authorization of a quantity of groundwater that is known to violate the current DFC, a DFC that is premised on the best technical information currently available, runs counter to any goal of premising the District's decisions on the most sound technical

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<sup>6</sup> Management Plan, p. 5.

<sup>7</sup> To the degree that Forestar's Application constitutes an application for a new permit or permit amendment by a historic user, this discussion demonstrates some ways in which the District's decision addresses criteria set forth at Tex. Water Code § 36.113(e)(1).

<sup>8</sup> See pp. 19 – 23 of Management Plan.

<sup>9</sup> To the degree that Forestar's Application constitutes an application for a new permit or permit amendment by a historic user, this discussion demonstrates some ways in which the District's decision addresses criteria set forth at Tex. Water Code § 36.113(e)(3).

<sup>10</sup> ES letter dated April 11, 2013: Lost Pines Groundwater Conservation District's Permitting Process and current applications being considered by the Board (Attachment A).

basis possible. Having devoted considerable time, energy, and resources to the process of developing a DFC, it is appropriate for the District to act in a manner that fully respects the outcome of that process. To ignore the current DFC, as Forestar invites the District to do by its motion for rehearing, renders the DFC process virtually meaningless. If Forestar believes that sound science and policy supports a finding that more groundwater is available than that reflected in the current DFC, Forestar is free to present its information to the District during the ongoing DFC revision process to be weighed comprehensively with all other technical information and policy considerations.

### **Additional Information for Consideration**

#### 2. Impacts of Forestar's requested pumping on other aquifers, surface waters and the Colorado River provide additional reasons for limiting Forestar's permit.

Environmental Stewardship retained the professional services of certified hydrogeologist, George Rice, to investigate the use of the Central Queen City-Sparta Groundwater Availability Model (GAM), used by the District, to estimate the impacts of pumping large quantities of groundwater on surface waters, the Colorado River, and other aquifers. See George Rice report and sworn affidavit<sup>11</sup> (Attachment B).

2.1 Impacts on other aquifers – Rice concludes (Section 2.0): “Forestar’s proposed pumping would affect the Hooper, Simsboro, Calvert Bluff, and Carrizo aquifers. Forestar’s proposed pumping would create a cone of depression (region of reduced hydraulic heads) that extends to the contact of the Hooper Aquifer and the underlying Midway Group<sup>12</sup>. Thus, it would affect both confined<sup>13</sup> and unconfined<sup>14</sup> portions of the aquifers. Where the aquifers are confined, the reduced heads would cause water levels in wells to decline. Where the aquifers are unconfined, the reduced heads would cause dewatering of the affected portions of the aquifers.” **These are serious impacts that have not been adequately evaluated and reported in the General Manager’s recommendation.**

Table 1 in the Rice report demonstrates that the GAM predicts that pumping of 45,000 acre-feet per year (Phased-in Forestar Pumping) is estimated by 2060 to cause drawdown of 624 feet in the Simsboro Aquifer (Layer 7) at the epicenter of the well field resulting in an average drawdown across the District of 114 feet. These drawdown values derived by Rice correspond directly to the drawdown depicted in Attachment C and Table 1 of the General Manager’s recommendations<sup>15</sup>. With these correlations in mind, it is evident that the GAM also predicts that there will be associated average drawdowns across the District in other aquifers: 6 feet average across the District in the Carrizo (Layer 5), 34 feet in the Calvert Bluff (Layer 6), and 48 feet in the Hooper (Layer 8). Though drawdown maps have not been drawn for these other aquifers, it is reasonable to anticipate that similar drawdown maps can, and should be prepared to further evaluate the impact of such extensive pumping on surface features and domestic wells.

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<sup>11</sup> Rice Report and Affidavit (Attachment B).

<sup>12</sup> Figure 2 of Rice Report shows that the cone of depression extends to the model boundary. This boundary represents the contact of the Hooper Aquifer and the Midway Group (TWDB 2004a, page 6-3). The extent of the cone of depression can also be seen by comparing LPGCD’s GAM output files for runs 50 (baseline) and 54 (Phased-in Forestar pumping).

<sup>13</sup> A confined aquifer is buried below geologic units that have a relatively low hydraulic conductivity. When a well taps a confined aquifer, the water level in the well will rise above the top of the aquifer.

<sup>14</sup> Unconfined aquifers are usually exposed at land surface. The water level in a well tapping an unconfined aquifer represents the position of the water table in the aquifer.

<sup>15</sup> Joe P. Cooper, Memorandum to the Board of Directors: Forestar (USA) Real Estate Group, Inc., Application for Well Registrations, Operating Permits and Transfer Permits for Wells nos. 1-10. March 20, 2013.

Rice also extracted estimates of the drawdown from existing permits<sup>16</sup> (Table 2: baseline) for the Carrizo, Calvert Bluff, Simsboro and Hooper aquifers. In comparing these drawdowns from existing pumping to the adopted DFCs for these aquifers<sup>17</sup> (Attachment C), it becomes apparent that the existing permits in the District already causing drawdown estimates to approach or exceed the DFCs. When the Forestar proposed pumping is added to the existing permits, the total combined permits, if fully exercised, are likely to exceed the adopted DFC drawdowns. This data provides further justification for the limitations the Board placed on the Forestar permit.

This data and conclusions by Rice, derived from the LPGCD's Forestar GAM run, support Environmental Stewardship's long held contention that the aquifers of the Carrizo-Wilcox Group communicate, as frequently reported in the literature<sup>18,19</sup>, and are not isolated as claimed by some. Since the GAM predicts that leakage between aquifers will cause drainage of aquifers associated with the target aquifer (the Simsboro), it is important to carefully evaluate the impacts of pumping the Simsboro on the Carrizo, Calvert Bluff, and Hooper aquifers. It is especially important to investigate the potential impact on exempt domestic wells in the Carrizo and Calvert Bluff, as many residents of the counties rely on these aquifers. **This data provides reason to GO SLOWLY in permitting large commercial wells and supports the Board's decision to limit the Forestar permit.**

2.2 Impact of "Phased-In" Pumping – Table 3 in the Rice report deals with the impact of the "Phased-in" or "staging" plan which Forestar promotes as *"an effort by Forestar to assist the District Board in addressing the unsupported, but recognizably difficult political position facing the Board because of very real public fears"*<sup>20</sup>. The projected differences in the Phased-In Pumping versus the "Original Application Pumping" are very minor and demonstrate that both projects result in about the same drawdown levels over the life of the project. The difference in drawdown in the targeted Simsboro Aquifer (Layer 7) is 5 feet less at the epicenter of the well field (629-624=5 feet) in the "Phased-In" project versus the "Original Application Pumping" project. **There are no significant benefits to the aquifers or drawdown levels of the Phased-in pumping scenario.**

2.3 Impact on the Main Stem of the Colorado River – Rice concludes in Figure 6 of his report that "Forestar's proposed phased-in pumping will decrease groundwater discharge to the Colorado River. After about 2040, the predicted effect of the phased-in pumping is little different from pumping at a constant rate of 45,000 acre-feet per year".

Using the pumping files provided by LPGCD<sup>21</sup>, Rice shows that the GAM predicts that both Forestar's pumping at 45,000 acre-feet per year, and phased-in pumping, will further decrease outflows from the aquifers to the main stem of the Colorado River when compared to baseline pumping, and that the impact from both pumping schemes are essentially the same after the year 2040.

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<sup>16</sup> See Table 2 Estimates of drawdown from baseline pumping in Rice Report

<sup>17</sup> Estimated Drawdown of Aquifers in Lost Pines GCD from Permitted and Applicant Permits Compared to DFC (Attachment C, page 1).

<sup>18</sup> TWDB Report 109, Groundwater Resources of Bastrop County, Texas, page 34. March 1970.

<sup>19</sup> Bureau of Economic Geology, W. B. Ayers, Jr., and Amy H. Lewis, 1985. The Wilcox Group and Carrizo Sand (Paleogene) in East-Central Texas: Depositional Systems and Deep-Basin Lignite, pages 1-17.

<sup>20</sup> Edmond R. McCarthy, Jr., July 2, 2013 letter to Joe Cooper and Robin Melvin.

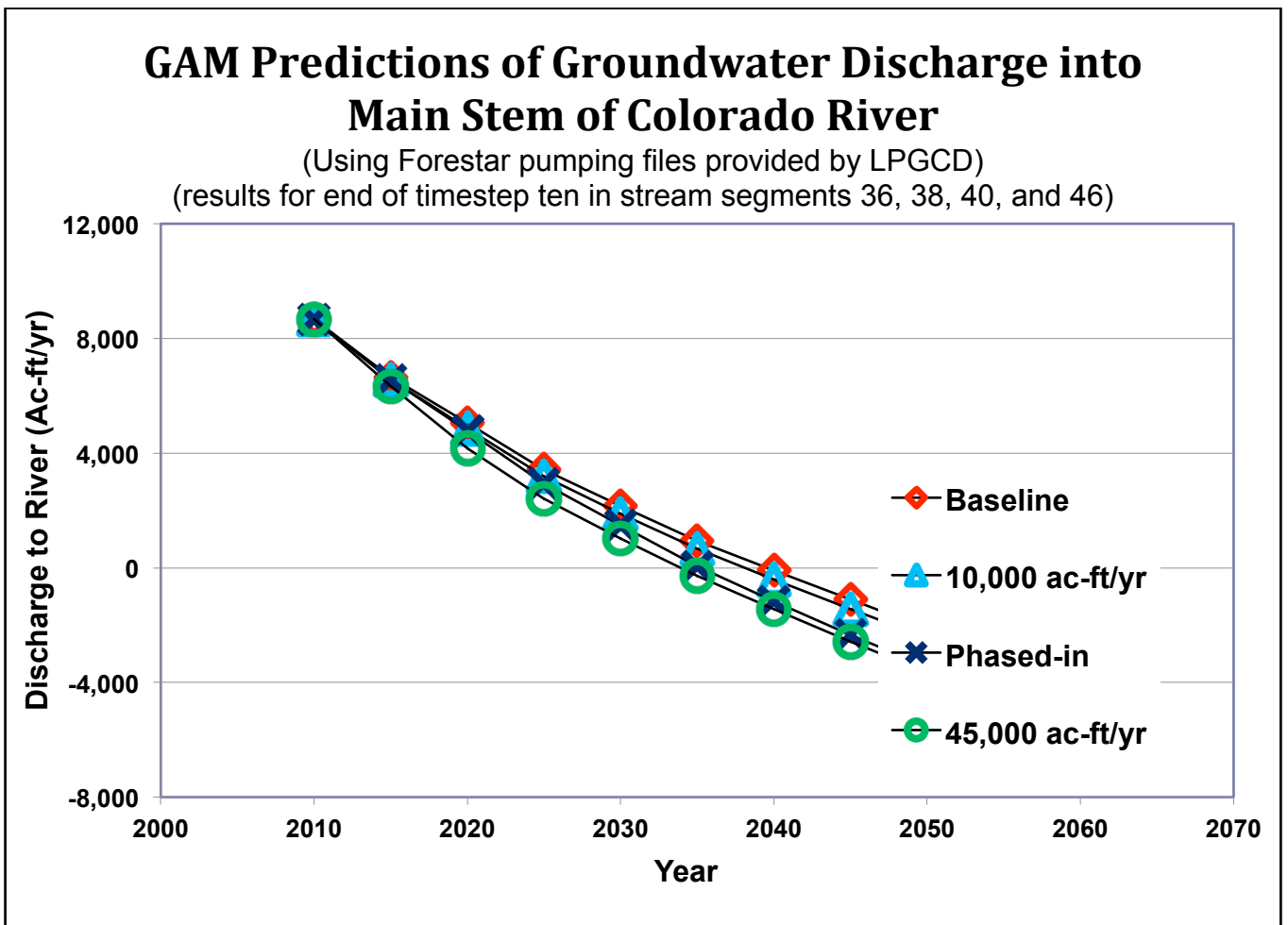
<sup>21</sup> Andrew Donnelly provided GAM files in response to Environmental Stewardship's April 2, 2013 PIAR. Files were identified and copied to an external hard drive and sent directly by Mr. Donnelly to Mr. Rice on October 2, 2013.

Rice tested the GAM<sup>22</sup> to determine whether or not it could reliably predict trends in outflows from the aquifer to the Colorado River and concluded that the GAM predictions are consistent with expectations regarding the effects of pumping rates, duration, and distance from the river. Rice concludes<sup>23</sup> that: **“The results presented indicate that the GAM can reliably predict how pumping will affect trends in the discharge of groundwater to the Colorado River”**. **As such, it is reasonable that the GAM is a useful model for predicting trends related to the impact of groundwater pumping on the Colorado River and its tributaries.** Looking at the GAM results, depicted in Figure 6 from the Rice Report, it is clear that the trend is for less water to leave the aquifers each year as outflows to the river, thus the flow in the river each year will contain less groundwater contribution as high rates of pumping continue. It is also clear that this trend reduces outflow to the river as time passes and permitted pumping increases. The extremely negative slope of these trend lines signals a serious impact on outflows to the river over time. It should be noted that the trend line for 10,000 acre-feet per year of pumping, near the permitted 12,000 acre-feet per year, deviates only slightly from baseline, and minimizes the impact of Forestar’s pumping. ES has concentrated its focus on the Colorado River, however, a clear inference from Rice’s findings is that the same trends would be observed in the Brazos River watershed and in other surface features between the Colorado River and the Forestar well field.

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<sup>22</sup> See section 3.2 of Rice Report

<sup>23</sup> Rice report, Section 3, page 8.



**Figure 1: Figure 6 from Rice Report**  
Effects of Forestar’s Proposed Pumping on Colorado River

**The trend toward decreasing outflows to the river is critical during drought conditions.**

Though not as critical during wet years (years with average or greater rainfall in the watershed of the river), this trend becomes critical in drought years like we are now experiencing in Texas and the Colorado River basin. To put the impact of reduced outflows in perspective, consider the following scenario depicted in the USGS hydrograph of flow rates in the Colorado River at the Bastrop Gage<sup>24</sup> (Figure 2 & Attachment C): on September 14, 2013 at 6:11 am the flow of the Colorado River at the Bastrop Gage reached a record low for the year 2013 of 144 cubic feet per second<sup>25</sup>. The standing record low flow for recent years is 143 cubic feet per second set on November 21, 2008, at 3:14 am.

<sup>24</sup> Colorado River at Bastrop Gage. USGS Hydrograph of Flow Rates (cfs), January 1 – December 13, 2013 (Attachment C).

<sup>25</sup> LCRA hydromet data for the flow of the Colorado River at the Bastrop Gage on September 14, 2013, at 6:11 am was 144 cubic feet per second. The standing low flow at the same location going back to 2007 is 143 cubic feet per second set on November 21, 2008 at 3:14 am per USGS graph of flow records 2007-present (as far back as the online data are available).

The TCEQ<sup>26</sup> has established environmental flow requirements for the Colorado River at Bastrop Gage during periods of drought to be 120 cubic feet per second. Measured groundwater discharge to the Colorado River ranges from 30-50<sup>27</sup> cubic feet per second. In this real scenario, the flow of the Colorado River due to groundwater outflow from the Carrizo-Wilcox and associated aquifers in the Bastrop segment of the river on September 14 was between 21% and 35% of total flow in the river and between 25% and 42% of the TCEQ requirement. **If this trend continues, the contribution of flow to the river during periods of drought will be *significantly less* over time.**

**It is clear that ANY additional pumping that decreases flow of groundwater to the Colorado River further exacerbates an already serious negative trend. The pumping limit of 12,000 acre-feet per year placed on the Forestar permit is an appropriate mitigation of the impact of Forestar’s pumping on the Colorado River and its tributaries.**

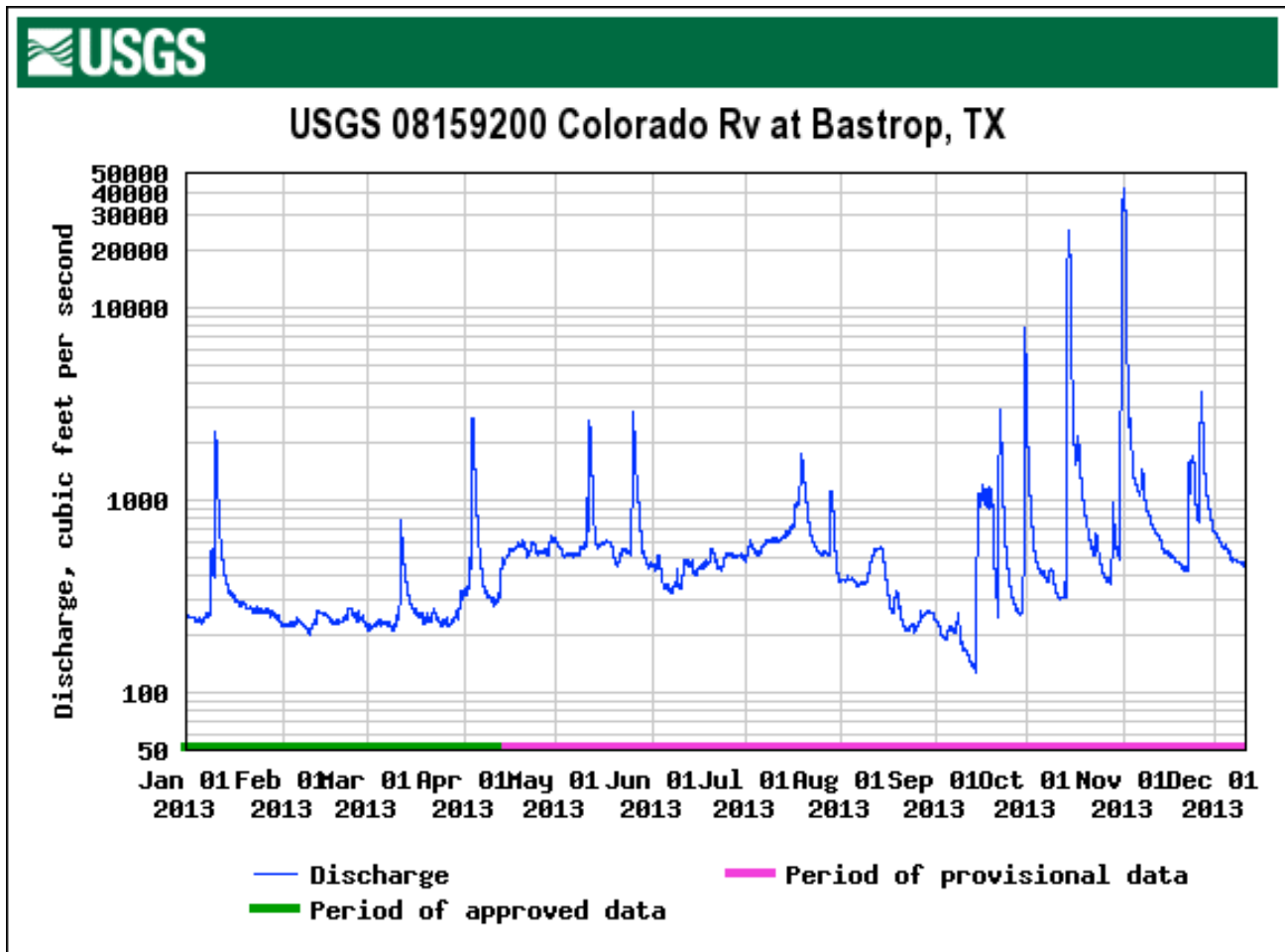


Figure 2: Colorado River at Bastrop Gage.  
USGS Hydrograph of Flow Rates (cfs), January 1 – December 13, 2013.

<sup>26</sup> TCEQ Environmental Flow Standards for the Colorado River were adopted in 2012: Proposed Rules 37 TexReg 2521, April 13, 2012. [http://www.tceq.texas.gov/permitting/water\\_rights/eflows/colorado-lavaca-bbsc](http://www.tceq.texas.gov/permitting/water_rights/eflows/colorado-lavaca-bbsc)

<sup>27</sup> Rice Report, Table 3.

**Response to Forestar's motion for rehearing letter dated August 6, 2013<sup>28</sup> ("Motion") and submission of previously provided documents.**

3. ES disagrees with Forestar's contention that the Board has violated its regulatory authority in rendering a decision to limit the applicant's permit (Motion, page 2, paragraph 1).

**Response:** See opening comments and Attachment A

4. ES disagrees with Forestar's contention that the Board has received evidence from Forestar, but only "comments" from the public (Motion, page 3, paragraph 3).

**Response:** No evidentiary or adjudicatory hearing whatsoever has been held with regard to Forestar's application. The acceptance of evidence by the Board would require the conduct of a contested case hearing subject to the procedural protections of the Texas Administrative Procedures Act such as adherence to the Texas Rules of Evidence, and a full opportunity for cross-examination. See, for example, Tex. Gov't Code §§ 2001.081, 2001.087. Since the District has declined to hold a contested case hearing, it cannot properly be said that there is any *evidence* before the Board from Forestar as Forestar has stated.

Because the General Manager's recommendations<sup>29</sup> were neither released to the public prior to the May 20, 2013 meeting of the Board, nor during that meeting, there was no opportunity to prepare comments regarding the recommendation prior to the meeting, much less to present reasoned comments at the meeting. The General Manager did not present an organized, comprehensive review of his recommendations to the Board<sup>30</sup> or the public during the meeting, but rather only responded to questions from the Board regarding the written, but not yet public, recommendations. Because the Board tabled the motion until the next meeting, it left open the option for written and oral public comments at the April 17, 2013 Board Meeting, when the tabled motion would again be addressed. ES and others promptly presented written comments and materials following the meeting as described herein. ES contends that all such comments should be made a part of the administrative record. Therefore, **ES is hereby resubmitting its comments to ensure that they are a part of the administrative record.** This letter is ES' means of doing so.

5. ES disagrees with Forestar's contention that the General Manager's March 20 memorandum to the Board adequately discusses each of the criteria set forth in the District's Rules.

**Response:** As pointed out in ES's letter cited above (Attachment B), the General Manager's Recommendation provides no accounting of any attempt to achieve a future DFC by using the five factors required in Section 36.1132 and the District's Management Plan. Furthermore, the District was unable to provide any supporting materials for the General Manager's recommendations in response to ES's Public Information Act Request, dated April 2, 2013<sup>31</sup> (Attachment D).

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<sup>28</sup> Edmond R. McCarthy letter to Joe Cooper dated August 6, 2013 Re: Motion for Rehearing in support of Forestar (USA) Real Estate Group, Inc.'s Application for Drilling Permits, Operating Permits and Transfer Permits for Well Nos. 1-10.

<sup>29</sup> Joe P. Cooper, Memorandum to the Board of Directors: Forestar (USA) Real Estate Group, Inc. Applications for Well Registrations, Operating Permits, and Transfer Permits for Well Nos. 1-10, March 20, 2013

<sup>30</sup> These presentations were made without benefit of a public address system, making it impossible to hear and understand the discussion.

<sup>31</sup> Public Information Act Request by Samuel Day-Woodruff on behalf of Environmental Stewardship dated April 2, 2013 (Attachment B).



In response to the flawed General Manager's Recommendation on the Forestar and other permits being considered at the time, ES instructed its counsel to provide the Board with a letter detailing the deficiencies in the GM's recommendations. Mr. Allmon, on behalf of Environmental Stewardship, wrote President Michael Talbot on April 1, 2013<sup>32</sup> (Attachment E). The letter states (page 1, paragraph 2): *In processing these applications, Lost Pines Groundwater Conservation District (LPGCD or District) has not complied with the requirements of the Texas Water Code Section 36.113(d). This provision of the Water Code requires that the District consider certain factors when granting a permit. As discussed [in this letter], the District has not considered these factors in a manner that would support issuance of the requested permits.*

Specifically, the letter addresses the following deficiencies in the General Manager's Recommendation:

- A. The District has not considered whether the proposed use of water unreasonably affects existing permit holders, as required by Texas Water Code Section 36.113(d)(2). (See page 1).
- B. The District has not considered whether the proposed use of water is consistent with the District's approved management plan. (See page 2)
- C. The District has not meaningfully considered whether the proposed use of water unreasonably affects surface water resources, as required by Texas Water Code Section 36.113. (See page 3).
- D. The District has not considered whether reasonable diligence will be used to protect groundwater quality. (See page 4).
- E. The District has not considered whether the application conforms with the District's Rules. (See page 4).
- F. Prior to granting the permits, the District should take steps to facilitate the implementation of adaptive management strategies. (See page 5).

**In conclusion, the General Manager's Recommendation regarding the Forestar Application is incomplete, and deficient; it substantially fails to address the requirements of the Texas Water Code. Thus it does not support the issuance of the requested permit.**

6. ES disagrees with Forestar's contention that the "May 13<sup>th</sup> Presentation"<sup>33</sup> entitled "Groundwater Modeling Results" "reflects that granting Forestar's request ... will not cause any unreasonable impact or adverse effects to the aquifer, other groundwater permittees or surface water in connection with the groundwater, and/or the District's Desired Future Conditions (DFCs) (Motion, page 4, last paragraph).

**Response:** To the contrary, the presentation provides supporting information that allowing the full 45,000 acre-feet per year of pumping would clearly cause drawdowns that exceed the drawdown limits established by the adopted desired future conditions. The Power Point presentation visually depicts GAM run modeling of the impacts of Forestar's requested pumping in comparison to the

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<sup>32</sup> Eric Allmon of Lowerre, Frederick, Perales, Allmon, & Rockwell letter to Michael Talbot dated April 1, 2013 discussing deficiencies in the GM's recommendations: Application by ...Forestar (USA) Real Estate Group, Inc. for Well Registrations, Operating Permits, and Transfer Permits for Well Nos. 1-10 (Attachment C).

<sup>33</sup> On May 13, 2013, the District conducted a special Board Meeting, during which it received a PowerPoint presentation from its consulting hydrogeologist, Andrew Donnelly, entitled "Groundwater Modeling Results."

District's adopted DFC (slide titled: GMA 12 Final Simulation<sup>34</sup>). The series of slides that represent the impact of Forestar's pumping are titled: Forestar Pumpage 100% Produced, Total drawdown (feet); Forestar Pumpage 100% Produced, Drawdown (feet) due to Forestar pumpage only; Forestar Pumpage 75% Produced, Drawdown (feet) due to Forestar pumpage only; Forestar Pumpage 50% Produced, Drawdown (feet) due to Forestar pumpage only; and Forestar Pumpage 25% Produced, Drawdown (feet) due to Forestar pumpage only.

Contrary to Forestar's conclusion that "These explanations should have prevented the Board from denying Forestar's application in part by limiting the production and transport authorization granted to only 12,000 acre-feet per annum" (Motion, page 5, full paragraph 1), the series of slides discussed above provide clear documentation that Forestar's requested pumpage, especially when considered in combination with existing pumpage, would cause the District to exceed its DFC and, therefore, the permit was rightly reduced and limited in order to protect the DFC. (See Attachment A for further details on using the MAG and DFCs to estimate pumping limits).

7. ES disagrees with Forestar's contention that "the 'May 13<sup>th</sup> Presentation' ignores the facts and legal limitations on Forestar's permit" (Motion, page 5, full paragraph 2).

As expressed in ES' letter to the Board dated November 20, 2013<sup>35</sup> (Attachment F), these protective covenants in the Forestar permit DO NOT resolve concerns that the aquifer will be over-pumped if Forestar is granted a 45,000 acre-feet per year "phase-in staging" permit. **The permit is the only point in the regulatory process that allows the District to deal with ONLY the Forestar permit when limiting or reducing pumping in the aquifer.** *Once permitted*, as stated in Forestar's May 10, 2013 letter, "when aquifer or climatological conditions dictate that a scientific foundation exists for the District to impose *nondiscriminatory* curtailment or proration orders on *all permit holders*, [then] Forestar will cooperate" (emphasis added). Put simply, Forestar agrees to comply only if all other permit holders are similarly curtailed. **The time to set appropriate limits on the Forestar permit is during the permit process.** The Board will be precluded from doing so after the permit is issued.

## CONCLUSION

Clearly, Forestar has been pressuring the District behind the scenes to accept its "phase-in staging" proposal since as early as May 9, 2013<sup>36</sup>, six days prior to the Board's decision to limit the permit to 12,000 acre-feet per year. In its "privileged & confidential" letters to the District on May 10, before the vote to limit the permit to 12,000 acre-feet per year, and again on July 2, Forestar argued privately to the District for the phase-in permit. What Forestar is ignoring is the Board's credible decision, through analysis of science and law, that 12,000 acre-feet per year is the amount of water that is available from the Simsboro aquifer without exceeding the DFC, which the Board is, by law, required to meet but not exceed. Forestar simply wants its way, 45,000 acre-feet ... or ... it will litigate. It disregards the District's regulatory responsibilities, as well as the health and viability of the aquifer system affected by its pumping.

Substantive information is provided herein to refute many of Forestar's basic claims. In addition,

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<sup>34</sup> Slide titled: GMA 12 Final Simulation also includes numerical reference to the modeled available groundwater (MAG or LPGCD Pumpage = volumes for 2010, 2020, 2030, 2040, 2050, and 2060).

<sup>35</sup> ES letter dated November 20, 2013: Forestar (USA) Real Estate Group Rehearing – comments on Forestar's May 10 and July 2 letters and November 4 presentation to the Board (Attachment D).

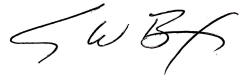
<sup>36</sup> Ed McCarthy and Brent Covert met with Joe Cooper and Robin Melvin on May 9, 2013, as referenced in Ed McCarthy's letter to same dated May 10, 2013. This letter presented the "Phased-In" proposal in detail.

new technical information is provided on the impacts of Forestar's pumping on other aquifers in the District, and on impacts to the Colorado River. These additional data support the Board's decision to reduce Forestar's permit limits to 12,000 acre-feet per year or, perhaps, to limit pumping even further.

**Nothing has changed to justify altering the Board's decision at a rehearing of Forestar's permit application.** The "phase-in staging" proposal was on the table BEFORE the decision to limit the permit to 12,000 acre-feet per year and was simply revised in the July 2 letter to account for the 12,000 acre-feet authorized by the Board.

Once again ES encourages you to continue to stand strong. We fully support you and will make every possible effort to help you in defending our groundwater against those who would deplete it.

Respectfully submitted,



Steve Box  
Executive Director  
Environmental Stewardship

Attachments:

- Attachment A. ES letter dated April 11, 2013: Lost Pines Groundwater Conservation District's Permitting Process and current applications being considered by the Board.
- Attachment B. George Rice, Forestar's Proposal to Pump Groundwater from the Simsboro Aquifer (Rice Report). December 11, 2013.
- Attachment C. Estimated Drawdown of Aquifers in Lost Pines GCD from Permitted and Applicant Permits Compared to DFC; Colorado River hydrograph.
- Attachment D. Public Information Act Request by Samuel Day-Woodruff on behalf of Environmental Stewardship dated April 2, 2013.
- Attachment E. Eric Allmon letter to Michael Talbot dated April 1, 2013 discussing deficiencies in the GM's recommendations: Application by ...Forestar (USA) Real Estate Group, Inc. for Well Registrations, Operating Permits, and Transfer Permits for Well Nos. 1-10.
- Attachment F. ES letter dated November 20, 2013: Forestar (USA) Real Estate Group Rehearing – comments on Forestar's May 10 and July 2 letters and November 4 presentation to the Board.

cc: County Judge Paul Pape, Bastrop County  
County Judge Paul Fischer, Lee County  
Eric Allmon, Lowerre, Frederick, Perales, Allmon & Rockwell, counsel for ES  
David Lein, counsel for LPGCD  
Greg Ellis, counsel for LPGCD Board

Environmental Stewardship is a charitable nonprofit organization whose purposes are to meet current and future needs of the environment and its inhabitants by protecting and enhancing the earth's natural resources; to restore and sustain ecological services using scientific information; and to encourage public stewardship through environmental education and outreach. We are a Texas nonprofit 501(c) (3) charitable organization headquartered in Bastrop, Texas. For more information visit our website at <http://www.environmentstewardship.org/>.