

PRESS RELEASE
November 10, 2014

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Landowners Appeal Party Status to State District Court

Landowners Bette Brown, Andrew Meyer, Darwyn Hanna, as individuals, and Environmental Stewardship, a non-profit organization, filed a petition on November 7 in State District Court in Bastrop County, seeking to reverse a decision by Lost Pines Groundwater Conservation District (District). On September 10, 2014, the District denied the Landowners' request to participate in a contested case hearing between End Op, L.P. (End Op), a Williamson County water marketer, the District, and Aqua Water Supply Corporation (Aqua), a non-profit supplier of water in Bastrop and Lee counties which requested the hearing. The District is a political subdivision of the State of Texas with responsibility to promote water conservation, preservation, protection, and recharge of groundwater and aquifers within those two counties and to ensure that groundwater is used efficiently and at sustainable rates.

The Landowners are situated above the Simsboro aquifer within the District, and own the groundwater in place beneath their land as a real property right, according to the Texas Water Code and recent Texas Supreme Court decisions. Their request to participate in the contested case hearing was based on that property right. "If left unchallenged, the District's decision on who may contest a groundwater permit application will set a very unfortunate precedent for many Texas landowners and their right to equal

protection under state water law,” said Don Grissom, attorney for the individual Landowners. “The regulatory process, including groundwater districts’ permitting process for huge commercial projects like this one, must afford the same due process to landowners who do *not* wish to sell their groundwater as it provides to private water marketers who derive their water rights from landowners who *do* choose to sell water.”

Aqua’s challenge to End Op’s application to the District for permits to drill 14 wells and produce 56,000 acre-feet (equal to about 18 billion gallons) per year of groundwater for export from the Simsboro aquifer under Bastrop and Lee Counties was heard earlier this year by an Administrative Law Judge (ALJ) in the State Office of Administrative Hearings (SOAH). The District has the final authority whether to adopt or reject the ALJ’s findings and recommendations to the District which resulted from the SOAH contested case hearing.

After a preliminary SOAH hearing in August 2013, the ALJ denied the Landowners’ request to be parties to the hearing, despite the fact that all the evidence presented at the preliminary hearing demonstrated that the wells would impact the aquifer levels beneath Landowners’ property. The District approved the ALJ’s decision at its September 10 Board meeting but referred one of the ALJ’s recommendations on End Op’s application itself back to SOAH for development of additional evidence and conclusions. That matter is still pending.

The Landowners have now petitioned in State District Court to reverse the District’s decision that the ownership of groundwater is not an interest warranting protection in the District’s permitting process. The petition is based on the principle that ownership of land, with the accompanying vested interest in groundwater beneath it, constitutes a legally protected interest within the regulatory framework established by

Chapter 36 of the Texas Water Code. "Lost Pines Groundwater Conservation District was faced with several difficult decisions arising from the ALJ's findings and recommendations on End Op's application," said Steve Box, Executive Director of Environmental Stewardship. "We continue to completely support the District's conservative approach as the regulatory body responsible for protecting the aquifers under Bastrop and Lee counties. However, the private property rights of landowners who seek to protect and conserve their groundwater must also be recognized and preserved. We think the District erred in excluding affected landowners from this contested case hearing."

Landowners Brown, Meyer and Hanna are represented by Donald H. Grissom, Grissom & Thompson, of Austin, TX, and Ernest F. Bogart, Owen & Bogart, of Elgin, TX. Environmental Stewardship is represented by Eric Allmon, Frederick, Perales, Allmon & Rockwell, of Austin, TX.