

The Final Judgment rendered by Judge Campbell of the 21<sup>st</sup> Judicial District Court in Bastrop County, Texas in *Meyer et al. v. Lost Pines Groundwater Conservation Dist. et al.*, Cause No. 29,696, has been appealed to the 3rd Court of Appeals in Austin.

On January 4, 2018, Judge Campbell signed a Final Judgment in favor of landowners Andrew Meyer, Bette Brown, Darwyn Hanna, and Environmental Stewardship (the "Landowners") reversing the District's decision to deny the Landowners party status in the contested case hearing on End Op, L.P.'s applications and remanding the matter back to the District for proceedings consistent with the Court's decision. The Final Judgment also reversed the District's September 2016 order issuing permits to End Op because the Landowners were entitled to participate as parties in the contested case hearing. The Court's decision effectively revokes End Op's permits, which authorized a withdrawal of up to 46,000 acre feet from the Simsboro, and orders the District to conduct a new proceeding that allows the Landowners to participate as parties.

On January 24, 2018, End Op filed a notice of appeal of the Final Judgment. In the notice, End Op requested an accelerated appeal pursuant to section 36.252 of the Texas Water Code, which mandates expeditious judicial review at the district court level. In response, the Austin Court of Appeals assigned the cause an appeal number (03-18-00049-CV), which likely means the case will stay in Austin as opposed to being transferred to another appellate court under a docket equalization order. Although the District's Board held a meeting on January 17, 2018, to consider and take possible action on the Final Judgment, the Board voted to "table the matter pending further research by its law firm" and has not yet reconvened. The District has until February 7, 2018 to timely file a notice of appeal.

The Court did not provide specific reasons as to why it decided the District "erred" in denying party status to the Landowners. Prior to issuance of the Final Judgment, a merits hearing was held before Judge Campbell in October 2017 where the parties gave oral argument on the briefing that had been submitted since the Landowners first filed their appeal in November 2014.

Before taking up the merits, the Court considered pleas to the jurisdiction and argument that the Landowners' appeal was barred under section 36.251 of the Texas Water Code because only a district, applicant, and parties to a contested case hearing are entitled to an appeal. Ruling from the bench, the Court concluded it had jurisdiction over the Landowners' request for judicial review, and immediately took up the merits.

The District and End Op argued the Landowners did not meet the legal test for standing to participate as parties, which requires demonstrating ownership of

groundwater plus a particularized injury not common to the public that is fairly traceable to the permits. The parties agreed the Landowners had demonstrated ownership of groundwater. The crux of the dispute, rather, was whether the Landowners had satisfied the injury elements of the test. The District and End Op contend the Landowners cannot demonstrate a particularized injury where, among other reasons, Ms. Brown was the only landowner with a well, which was in a shallower formation than the Simsboro and in much closer proximity to Forestar's proposed well field in the Simsboro. The Landowners contend that the correlative rights doctrine, found in oil and gas law, governs a landowner's interest in groundwater and entitles each landowner to his or her fair share of the resource. The Landowners contend this correlative right confers standing to protest an application.

The issue before the Austin Court of Appeals—how do you demonstrate standing to protest an application for a groundwater permit including how do you satisfy the injury elements of the test and whether the correlative rights doctrine has any application in a standing analysis— is one of first impression.