

Where we are today on the Forestar Settlement?

At the time of the drafting of this flier, we at the League of Independent Voters are not supporting this settlement. Forestar, as may be expected, is holding the District's feet to the fire with the threat of a continued lawsuit, and the District seems satisfied with the result of its negotiation. **We don't want the District to be satisfied with half a loaf.** Stakeholders offered the District very reasonable concepts for better protection of our aquifer --- they should take additional time to insert those protections in Forestar's permit NOW. Are Forestar's investors going to be thrilled about several more years of expensive and time-consuming lawsuits that mostly benefit their high-paid attorneys if they resist good sense?

We hope the Lost Pines Board holds steadfast on the remaining points of contention, and not be rushed by Forestar into a contract that looks only at the historic data upon which Forestar wants to rely, instead of *also* recognizing that same data should be used to develop forward-looking science that protects our aquifer *before irreparable damage is done*. The District negotiated a good starting point for dealing with mega-permits; all it takes now is the time needed to strike a better settlement.

What we like about this agreement:

- Forestar has reduced their permit demand from 45,000 AFY to 28,500, probably more due to the fact there is no demand for that much water rather than an overriding concern for the aquifer.
- Forestar has agreed to do a stair-stepped permit that seeks feedback from the aquifer to tie the amount of water it pumps to how its pumping affects the Simsboro aquifer in Bastrop and Lee Counties.
- Lost Pines will be able to recoup \$164,000 in its attorneys fees.
- This contract dispute resolution will eliminate 1 of the 3 water grabs we have to fight.

What we don't like about this agreement at the time of the drafting of this document:

- The 28,500 AFY in the Forestar permit is still more water than can be sustainably pumped from Bastrop and Lee Counties.
- Most of the groundwater that Forestar pumps will come from under Lee County, which will be the area most damaged.
- Additionally, other water marketers such as End Op intend to pump primarily in Lee County, while Blue Water also intends to pump intensively next-door in Burleson and Milam counties.

Some additional considerations:

Bastrop is slated to receive growing numbers of people fleeing Austin's affordability collapse (*the word used by Austin's demographer, not ours*). Does it make sense to you that we should take any risks in setting a precedent to further mine the aquifers that we depend on?

What's the rush? If Forestar is sincere and in a hurry, you would think they would fall all over themselves to include our concerns laid out for the second time, in a manner close to the form of the comments reproduced on the back of this flier and get on down the road.

Christmas Holiday Rushes: This is a common tactic among the powerful to push through deals when people are distracted. Moreover, it is not clear to us that the Lost Pines Board has had the time to fully consider this settlement and the complexities (legal and scientific) involved. We've been working overtime, we hope the Board has also rolled up its sleeves --- we're too close to a better permit to stop now.

Letter to Lost Pines GM, Jim Totten, Remaining Points of Foretar Settlement
December 21, 2015

Jim,

Thank you for your personal efforts to accommodate our concerns.

I have quoted below in its entirety, as a point of reference, Steve Box's recap of those concerns after our Friday meeting.

Steve and I have discussed the proposed changes to the Settlement Agreement and Operating Permit represented in your redline that we understand was produced as a result of further negotiations with counsel for both parties to the settlement.

I will attempt on behalf of Steve and myself to describe our issues with the new language.

We appreciate the addition of new Settlement Agreement Section 6. b. in and of itself. As drafted, **new Section 6. b.** addresses conceptually what we had hoped the permit itself would also address, but merely "acknowledges" the concept of a "living" document ---that is, **the permit** should also provide for the use, not merely the acknowledgement, of "additional data and science" (emphasis added) as the basis for ongoing, periodic review of the Permit by the District, i.e. not necessarily pegged to the 5-year renewal process contemplated in Special Condition 7 of the Permit.

Unfortunately, we do not believe Section 6. of the Settlement Agreement actually found its way into the Permit itself. Without that integration, we are concerned that Special Conditions in the Permit will prevail over mere acknowledged concepts in the Settlement Agreement.

In fact, we provided a framework for that integration with our proposed placeholder items, covered in Steve's email below in 1) and 2). That is, 1) and 2) provide the "science" component --- the forward-looking component, if you will --- that Section 6. of SA contemplates. **If 1) and 2) were integrated into Special Condition 5 of the Permit, we would have come full circle and would have had the concept of SA Section 6. articulated with specifics in Special Condition 5.** That is, the additional factors in 1) and 2) would be included in calculations under the Permit.

While Special Condition 3. was modified to add a requirement that 5 years from the date of the permit shall have elapsed before Forestar may move from Phase II to Phase III, we are unable to agree that change speaks to the improvements in the way of *forward-looking calculations we seek. The term "science" connotes these improvements in the Settlement Agreement --- however, the use of the term "science", and the purpose for which it used, are not integrated into the permit.*

With the construct you have achieved in the current revisions (in particular, retaining the change you made to add new (c)(i) to Special Condition (3)), we request the following specific language be added to Special Condition 5 --- this language implements Steve's message above:

(5) The General Manager may approve a weighted average methodology and/or other methodology for calculating the Average Water Level or Average Rate of Change, or other calculations, that take into consideration additional pumping, the predicted increase in Average Rate of Change over time, and the impact of groundwater-surface water interaction, if such new methodology is supported by data gathered by the Monitoring Well System and evaluated using forward-looking science.

Please note one error we discovered in the redline: we believe that the reference in Special Conditions (3).c.(iii) and (3).d.(ii) to Special Condition "(5)" should in fact be Special Condition "(4)".

Please let us know any questions or concerns. Again, we appreciate the assistance of all parties in addressing our concerns.