

LOST PINES GROUNDWATER CONSERVATION DISTRICT BOARD

LITIGATION POLICY

1.01. Scope. This Policy applies to all Lost Pines Groundwater Conservation District (“District”) litigation.

1.02. Policy. The management of the District’s litigation should follow the guidelines outlined below:

- a. Mediation is the preferred method of resolving disputes in litigation.
- b. The District is authorized to file appeals of adverse legal decisions.
- c. The District is authorized to seek recovery of the District’s legal fees, including fees for any District official sued in their official capacity, in any suit brought against the District.

The foregoing policy is intended to timely preserve the District’s litigation rights and to provide direction to the District’s General Manager and legal counsel. Upon proper notice for an open meeting, the Board may vote to give different instructions to the General Manager and/or legal counsel.

1.03. State Office of Administrative Hearings (“SOAH”) or Hearings Examiner. Pursuant to District Rule 15.2, if a timely request for a contested case hearing is received on an application, the General Manager is authorized to request that the matter be referred to SOAH or a hearing examiner for the preliminary hearing and the hearing on the merits. If there are no other persons requesting referral to a hearing, the District will be required to pay all costs associated with the contract for the hearing unless the hearing requestor or the applicant agree to share the costs. If the hearing requestor or the applicant agrees to share in the cost, then they must follow the procedures for depositing funds with the District under District Rule 15.2.A(2).

1.04. Mediation. Once a matter is referred to a hearing, the General Manager is authorized to request mediation in writing and coordinate with the mediator. For cases in the state courts, the General Manager is authorized to participate in a mediation along with members of the Board’s mediation committee.

1.05. Appeals. If any legal decision is issued in any court of competent jurisdiction, including state courts, SOAH, or by hearing examiner that is adverse to the District, in order to preserve the right to appeal, the Board directs the General Manager and legal counsel to appeal that decision within the timeframe required by the applicable law or rule. If the Board has a regularly scheduled Board meeting prior to the appeals deadline, the Board may take action on the decision to appeal at that meeting.

1.06 Attorneys' Fees and Costs. Under section 36.066 of the Texas Water Code, the District is entitled to attorneys' fees and costs upon prevailing in a lawsuit that it did not initiate. The amount of those fees is discretionary and fixed by the court. In order to preserve its claim to fees in a lawsuit, the Board directs its General Manager and legal counsel to claim attorneys' fees and costs pursuant to the Water Code and any other applicable law in its pleadings. If the fees are awarded, the Board will determine whether to collect the fees awarded. This policy on attorneys' fees and costs is not intended to intimidate the public or discourage public participation in the contested case process but is necessary in order to preserve the District's right to attorneys' fees and costs in the event of litigation.

1.07. Delegation of Authority. The District's General Manager is delegated the authority to make litigation management decisions consistent with this Policy. The General Manager may always defer to the Board and seek a Board decision related to District litigation.