Excerpt provided by John Stover

STATEMENT OF FACTS

The Texas Legislature created Respondent in 2003 to conserve, protect, preserve, recharge, and prevent waste of groundwater in Anderson, Henderson, and Cherokee Counties. Tex. Special Local District Code Chapter 8863. It was empowered to adopt and enforce rules and regulations to carry out its functions. Tex. Water Code §36.101-.102. Respondent adopted rules to govern the exercise of its duties and responsibilities in 2003. CR 213. Appendix 3 (the "Rules"). The Rules were in effect when Petitioner bought its property in 2007. CR 558.

The Rules require permits to drill and operate a "water well," defined as "…any artificial excavation constructed for the purpose of exploring for or production of groundwater," Rules 1(u), and the operator must report quarterly the amount of groundwater pumped and pay a small fee based on that amount. App. 2 at 9. The underlying dispute concerns whether this Rule may be applied to Petitioner.

The Texas Commission on Environmental Quality ("TCEQ") has jurisdiction over all public drinking systems in Texas. On December 10, 2010, the TCEQ, responding to an inquiry from Petitioner's engineer, described Petitioner's facilities as a Groundwater Treatment Plant (emphasis added). CR 54 See also CR 50 where the TCEQ categorized Petition's water source as "Groundwater" and describes the

system: "…a ground water system that consists of one well…" (emphasis added) CR 51

After Petitioner refused repeated requests to comply with the Rules, Respondent's Board of Directors, on April 16, 2015, adopted a Resolution finding that Petitioner authorizing this lawsuit. App. 4. Petitioner did not request a rehearing or other administrative remedy from the Board, although the Rules required that step of anyone wishing to further contest Board action. Respondent sued Petitioner on August 15, 2016, seeking an injunction to compel compliance with the Rules and to impose a civil penalty in an amount within the District Court's discretion, per Tex. Water Code §36.102(b). CR 6.

Respondent has never condemned or restricted access to Petitioner's property, ordered Petitioner to stop operating, or tried to do so. It has never refused Petitioner a permit or any other authorization.

Petitioner filed a Counterclaim alleging Respondent took its property without compensation. CR 68. Neither it nor Petitioner's first five amended counterclaim filings identified the property Respondent had taken.

After the District Court ordered Petitioner to replead and identify the property taken, Petitioner in its Sixth Amended Counterclaim finally identified the property "taken" as its well and bottling plant located at 777 Willow Creek Drive, Palestine, Texas (the "Property"), and claimed the taking occurred when Respondent filed this

lawsuit on August 15, 2016. CR 351 ("On . . . August 15, 2016 . . . Counter-Defendant filed suit against Counter-Plaintiff.") As the Court of Appeals emphasized, that was the only taking Petitioner alleged: "The dispute as to whether the District's rules apply to Mountain Pure's facility remains unresolved. Therefore, as yet, no rules or restrictions have been imposed on Mountain Pure or its property. However, *in its counterclaim, Mountain Pure claims a permanent taking occurred when the District filed suit against it . . . to enforce its regulations applicable to groundwater*." (emphasis supplied). Opinion, App. 3 at 6.

Petitioner alleges that Ice River Springs withdrew from the agreement between it and Petitioner after Respondent advised it of this legal proceeding. November 4, 2016, Ice River Springs filed suit against Petitioner, John Stacks (Principal of Petitioner) and First Community Bank of Batesville over the agreement. The suit was filed in the Eastern District of Texas, Tyler Division, Civil Action No. 6:16-CV-1147-RWS-JDL. While Ice River did include reference to this legal proceeding, it also …[squealing]…… One, Ice River Springs discovers an additional undisclosed debt and a newly filed lien against the bottling plant.

The Mountain Pure Defendants made knowingly false representations about the natural spring; Ice River Springs later discovers that the spring is unusable; " The Mountain Pure Defendants misrepresented the state of the bottling plants vital

equipment. Ice River Springs First Amended Complaint for rescission, damages, and declaratory relief is attached as Appendix ___.

The District Court received evidence on Respondent's Third Amended Plea to the Jurisdiction, CR 585, and Petitioner's appraiser opined that after the August 15, 2016 "taking," *i.e.*, after Respondent filed this lawsuit, the Property was worth $4,090,000.00 and still suitable for the same use as before. CR 484, 379.

The District Court denied Respondent's First Amended Motion for Partial Summary Judgment on the takings claim and Respondent's Third Plea to the Jurisdiction. CR 602-04.

Respondent appealed. CR 605. The Twelfth Court of Appeals reversed the District Court's orders of denial, rendered judgment dismissing Petitioner's takings claim for lack of jurisdiction, and remanded the cause to the District Court for Respondent to pursue its claims. App. 3. There was no motion for rehearing.

Petitioner filed its Petition in this Court, which ordered this Response.