

REQUEST FOR INQUIRY

FILED BY

CURTIS CHUBB, PH.D.

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
DOCKET NO. 2015-0844-MIS**

RESPONSE OF THE BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT TO CURTIS CHUBB, PH.D.’S REQUEST FOR INQUIRY REGARDING POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT

The Brazos Valley Groundwater Conservation District (“Brazos Valley GCD”) files this response to the above-referenced Petition for Inquiry, under 30 Texas Administrative Code §293.23(f), in support of the Post Oak Savannah Groundwater Conservation District (“Post Oak Savannah GCD”). The Brazos Valley GCD is comprised of Brazos and Robertson counties, which are adjacent to the east of Post Oak Savannah GCD’s Milam and Burleson counties. Brazos Valley GCD is also a member district of Groundwater Management Area 12 and was a participant in adopting GMA 12’s desired future conditions (“DFC”) in 2010, and is currently in the process of consideration in the adoption of the next round of preliminary DFCs that are required under §36.108 of the Texas Water Code to be adopted by May 1, 2016. The Post Oak Savannah GCD’s rules currently regulate groundwater production in compliance with Chapter 36 of the Texas Water Code while recognizing its citizens’ property rights in groundwater. The rules in question also provide for procedures to monitor groundwater production and aquifer levels that may be affected by pumping and initiate curtailment of production in response to future damaging effects on the aquifers. The fact that the Post Oak Savannah GCD’s rules allow discretion in addressing the groundwater production curtailment to enforce its DFCs based on actual monitored levels and not just current groundwater availability models (GAMS) is prudent management at this time. Chapter 36 specifically only requires groundwater districts to “consider” the GAMs, but enforce the DFCs. Post Oak Savannah GCD recently used its discretion under the Water Code and its monitoring system to amend its rules to address concerns of damage to aquifer levels and property rights in the Yegua Jackson Aquifer. Future production in the Carrizo-Wilcox aquifers will be monitored by the Post Oak Savannah GCD, and its rules allow it to take action or even amend its rules in the future, as appropriate, as indicated by its robust monitoring system. The Petition for Inquiry should be dismissed.

Groundwater conservation districts are the “preferred method of groundwater management,” though its rules, to “protect property rights, balance the conservation and development of groundwater to meet the needs of this state and use the best available science in the conservation and development of groundwater,” pursuant to §36.0015 of the Texas Water Code, as amended by the 84th Legislature in its passage of HB 200 (effective September 1, 2015). Groundwater districts have an array of management techniques to choose from when adopting their rules, including the regulation and spacing of wells under §36.116, Water Code, that is within the discretion of the local groundwater district. Post Oak Savannah GCD’s rules comply with §36.116(a) with its spacing and acre-feet/acre production limitations and with §36.116(b) regarding its preservation of historic or existing use in its district prior to the effective date of its initial rules. Post Oak Savannah GCD’s acre-feet/acre production and spacing regulations help

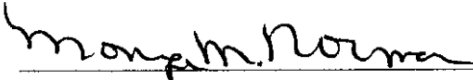
to enforce its DFCs by significantly reducing the amount of groundwater that can be pumped in Milam and Burleson counties, which was unlimited a decade ago, while respecting its citizens' property rights in groundwater under §36.002, Water Code, and Texas common law in the *Edwards Aquifer Authority v. Day* case. 369 S.W.3d 814 (Tex. 2012).

The Petition is incorrect in its statement regarding the requirements to rely on the Managed Available Groundwater estimate provided by TWDB. First, §36.1132(a) provides a floor for permitting, not a cap. Groundwater districts are required to issue applied-for permits up to the point that the exempt and permitted groundwater production will achieve the applicable desired future condition, not the MAG. Therefore, permitting is required until the actual aquifer levels reach the DFCs, and discretionary after that, to enforce the DFCs. Although MAGs are to be considered in permitting to manage total groundwater production under §36.1132(b), it is one of several considerations and is not a mandate. It is well-acknowledged that Groundwater Availability Models and MAGs are not perfect and should not be solely relied on, but just one more tool to be used and enhanced, as better hydrological data is gathered. For example, in the Brazos Valley GCD, the current GAM overstates the effects of current groundwater production on its aquifers, thereby understating the MAG.

Further, under the developing groundwater rights law and Constitutional takings analysis, it is questionable if even after a DFC is reached, whether a district can deny any permits, but instead, reduce the permitted amount of future and existing permits, as is addressed in Post Oak Savannah GCD's curtailment rule. Post Oak Savannah GCD's curtailment rule requires a comprehensive monitoring program to detect actual, not just modeled, effects on the aquifers and existing wells. The curtailment rule provides a set of triggers, based on hydrological evidence, and a framework of curtailment of production permits to reduce overall production to affect the aquifer levels, while providing discretion and authority to its Board to be able to address the problems as they are indicated by the well monitoring. At this time, a concern has not been indicated in the actual monitored levels, but the District is aware that this may likely change with planned projects.

The Post Oak Savannah GCD currently has a robust well monitoring program that it plans to expand in the future. The Post Oak Savannah GCD also has a track record of promptly and appropriately reacting through its rules and permitting. Recently, the Post Oak Savannah GCD responded to a detrimental effect to the Yegua-Jackson aquifer and existing wells due to an increase in groundwater production, which was indicated by its well monitoring. To address the detrimental effects, the Post Oak Savannah GCD amended its well-spacing rules for the wells drilled in the Yegua-Jackson aquifer. Still concerned about the effects of the increased production, the Post Oak Savannah GCD again amended its rules to add a new vertical spacing requirement from existing wells. The Post Oak Savannah GCD's rules allow the same type of monitoring and regulation, including production curtailment, as may be needed in the future to address the actual effects of increased production in the Carrizo-Wilcox aquifers. Groundwater districts can and will amend their rules in the future to meet the challenges in the future, as authorized in Chapter 36 of the Texas Water Code.

Sincerely,


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