

**REQUEST FOR INQUIRY**

**FILED BY**

**FRED C. RUSSELL**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY  
DOCKET NO. 2018-0194-MIS**

**AMICUS BRIEF OF THE BRAZOS VALLEY  
GROUNDWATER CONSERVATION DISTRICT  
TO FRED C. RUSSELL’S REQUEST FOR INQUIRY REGARDING  
THE POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT**

The Brazos Valley Groundwater Conservation District (“Brazos Valley GCD”) files this amicus brief 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”).

The Petitioner’s primary issue is the Post Oak Savannah GCD’s Groundwater Well Assistance Program (“GWAP”). The Texas Commission on Environmental Quality (“TCEQ”) does not have the authority to evaluate whether the GWAP is an adequate mitigation program, because well assistance or mitigation programs are not required nor addressed by Chapter 36 of the Texas Water Code, which governs groundwater conservation districts. The Post Oak Savannah GCD has developed a voluntary program to help small, typically exempt, wells that may be affected by groundwater production in the area. The TCEQ may not require a groundwater district to adopt any rules or programs that are not required by Chapter 36 of the Texas Water Code.

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, if warranted, in response to future 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 of the Water Code specifically only requires groundwater districts to “consider” the MAGs, but enforce the DFCs. Post Oak Savannah GCD 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 aquifer and other 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.

Groundwater conservation districts are the “preferred method of groundwater management,” though its rules, to “protect property rights, balance the conservation and development of

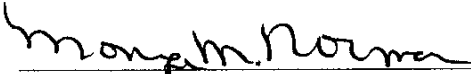
groundwater to meet the needs of this state and use the best available science in the conservation and development of groundwater,” pursuant to §36.0015 of the Texas Water Code, as amended by the 84<sup>th</sup> Legislature in its passage of HB 200 (effective September 1, 2015). Groundwater districts 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 prior to 2004, 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).

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. For example, 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.

The Brazos Valley Groundwater Conservation District supports groundwater districts’, including Post Oak Savannah GCD, ability to regionally manage by adopting rules that comply with Chapter 36 of the Texas Water Code, acknowledge constitutionally protected property rights, preserve historic or existing uses, and have the discretion to curtail groundwater production based on accurate well monitoring data, among other factors.

Sincerely,

  
Monique M. Norman

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Amicus Brief of the Brazos Valley Groundwater Conservation District to Fred C. Russell's Request for Inquiry regarding the Post Oak Savannah Groundwater Conservation District, regarding Docket No. 2018-0194-MIS, by email or first-class mail on this 12<sup>th</sup> day of March, 2018, to the representatives listed below:

### **Mailing List**

**TCEQ Docket No. 2018-0194-MIS**

**Petition for Inquiry filed by Fred C. Russell**

**seeking a review of Post Oak Savannah Groundwater Conservation District**

#### **For Petitioner**

Fred C, Russell  
2141 22 Hills Road  
Gause, Texas 77857  
979/446-0100  
[fredandma@exede.net](mailto:fredandma@exede.net)

#### **For Post Oak Savannah Groundwater Conservation District**

Gary Westbrook General Manager  
Post Oak Savannah GCD  
310 East Avenue C  
Milano, Texas 76556  
512/455-9900 FAX 512/455-9909  
[gwestbrook@posgcd.org](mailto:gwestbrook@posgcd.org)

#### **For Mid-East Texas Groundwater Conservation District**

David M. Bailey, General Manager  
Mid-East GCD  
101 W. Main, Suite 115  
Madisonville, Texas 77864  
936/348-3212 FAX 936/348-3512  
[david\\_metgcd@att.net](mailto:david_metgcd@att.net)

#### **For Lost Pines Groundwater Conservation District**

James Totten, General Manager  
Lost Pines GCD  
PO Box 1027  
Smithville, Texas 78957  
512/360-5088 FAX(512)360-5448  
[jtotten@lostpineswater.org](mailto:jtotten@lostpineswater.org)

#### **For Fayette County Groundwater Conservation District**

David A. Van Dresar, General Manager  
Fayette County GCD  
255 Svoboda Lane, Room 115  
La Grange, TX 78945  
979/968-3135 FAX 979/968-3194  
[david@fayettecountygcd.com](mailto:david@fayettecountygcd.com)

#### **For Brazos Valley Groundwater Conservation District**

Alan M. Daly, General Manager  
Brazos Valley GCD  
112 West 3rd Street  
Hearne, Texas 77859  
979/279-9350 FAX 979/279-0035  
[aday@brazosvalleygcd.org](mailto:aday@brazosvalleygcd.org)

#### **For Clearwater Underground Water Conservation District**

Dirk Aaron, General Manager  
Clearwater UWCD  
P.O. Box 1989  
Belton, Texas 76513  
254/933-0120 FAX 254/933-8396  
[daaron@cuwcd.org](mailto:daaron@cuwcd.org)

**For Bluebonnet Groundwater  
Conservation District**

Zachary Holland, General Manager  
Bluebonnet GCD  
P.O. Box 269  
Navasota, Texas 77868  
936/825-7303 FAX 936/825-7331  
[Zholland@bluebonnetgroundwater.org](mailto:Zholland@bluebonnetgroundwater.org)

Todd Galiga  
TCEQ Environmental Law Division MC  
173  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0600 FAX 512/239-0606

Vic McWherter  
TCEQ Office of Public Interest Counsel MC  
103  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-6363 FAX 512/239-6377

Docket Clerk  
TCEQ Office of Chief Clerk MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3300 FAX 512/239-3311

Brian Christian  
TCEQ Environmental Assistance Division  
MC 108  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3100 FAX 512/239-5678