PETITION FOR INQUIRY

To: Texas Commission on Environmental Quality

From: Curtis Chubb of Milam County, Texas

Date: 4 June 2015

BASIC INFORMATION:

Affected person status:

According to Texas Water Code Section 36.1082(a), I [illegible] for filing this petition because I own land in **Groundwater Management Area 12 (GMA 12).**

I own about 90 acres on County Road 330 in Milam County.

Reasons for filing this petition requesting an inquiry:

I am filing this *Petition for Inquiry* for the following three reasons listed in Texas Water Code Section 36.1082(b) and modified to fit my situation:

1. The rules adopted by the **Post Oak Savannah Groundwater Conservation District (District)** are not designed to achieve the **desired future conditions (DFCs)** adopted by GMA 12 during the joint planning process.
2. The groundwater in the management area is not adequately protected by the rules adopted by the District.
3. The groundwater in the management area is not adequately protected due to the failure of the District to enforce substantial compliance with its rules.

I believe that the failure of the District to protect our groundwater is due to a combination of the three reasons cited above.

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INTRODUCTION:

Over the past eight years, I [illegible] extreme overpermitting due to their disregard of the **modeled available groundwater (MAG)**.

In every case, I was completely ignored.

I now feel as if there is no other recourse besides submitting this *Petition for Inquiry*.

I [illegible] to ensure that groundwater districts fulfill their duty to conserve and protect the aquifers.

The District has failed to both develop and enforce rules that will allow the DFCs to be achieved and our groundwater to be protected. The evidence supporting my concerns is provided below.

I believe that the District has made groundwater management decisions that will culminate in a future where people who live within t[illegible] groundwater.

I hope that the Texas Commission on Environmental Quality will act to require the District to institute and enforce rules that will conserve and protect our groundwater for future generations.

OVERVIEW:

In the following paragraphs, I present evidence supporting the following claims: 1) that the [illegible]; [illegible] do not adequately protect our groundwater; and 3) that the District does not enforce substantial compliance with Rule 7.6.

Part 1 of the discussion will highlight problems with specific rules.

In *Part 2* of the discussion, I [illegible] fail to protect our groundwater and will not allow the DFCs to be achieved.

The example in *Part 2* is how water-marketer Blue Water Systems plans to pump unsustainable amounts of groundwater by taking full advantage of both the problems with the [illegible] rules and the [illegible].

Blue Water Systems is a major water marketer to which the District has granted permits to produce and export 71,000 acre-feet/year of Simsboro and Carizzo Aquifer groundwater.

In *Part 2* of the discussion, I use the published plans of Blue Water Systems to provide an actual example of [illegible] fail to protect our groundwater.

NOTES:

1. The *Petition for Inquiry* has six appendices:
    - Appendix 1 = Rule 5.1.2.
    - Appendix 2 = The District's Permits and Pumping July 2013 File:
        - NOTE: This is an Excel File and is on the enclosed disc ONLY.
        - NOTE: The Carizzo Aquifer is labeled as the Carrizo-Wilcox Aquifer in the file.
    - Appendix 3 = Table 8- [illegible] (source of MAG values).
    - Appendix 4 = GMA 12 Predictive Pumping PowerPoint Presentation/Feb. 25, 2015.
    - Appendix 5 = Table 7- [illegible] (DFCs).
    - Appendix 6 [illegible]

2. T[illegible] http://www.posgcd.org.

3. In addition to this hard copy, the entire *Petition for Inquiry* has been copied to the enclosed disc.

BASIS FOR THE PETITION – Part 1:

Rule 5.1.2:

Rule 5.1.2 grants everyone within the District the right to apply for production permits to pump up to 2 acre-feet/year/acre (*See Appendix 1*).

Rule 5.1.2 is unrealistic since the District encompasses 1,088,000 acres. If production permits based on Rule 5.1.2 were issued for every acre of land within the District, the total groundwater production would equal 2.2 million acre-feet/year – a production rate which would neither achieve the DFCs nor protect our groundwater.

The unrealistic production rate of 2 acre-feet/year/acre has resulted in the District issuing production permits which exceed MAG by 116% - *see Figure 1*.

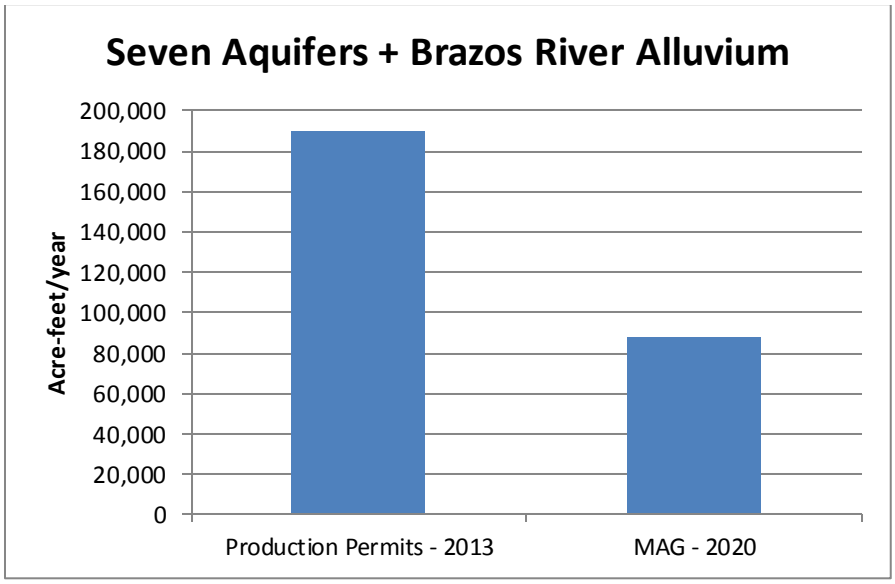


Figure 1: Comparison of Production Permits and MAG totals for seven aquifers (Carizzo, Calvert Bluff, Simsboro, Hooper, Queen City, Sparta, and Yegua-Jackson) and the Brazos River Alluvium within the District. The Production Permits total was calculated from data contained in the District's Permits and Pumping July 2013 File (See Appendix 2). MAG 2020 was determined from the GAM Runs and GTA Assessment cited for Table 8- [illegible] (See Appendix 3).

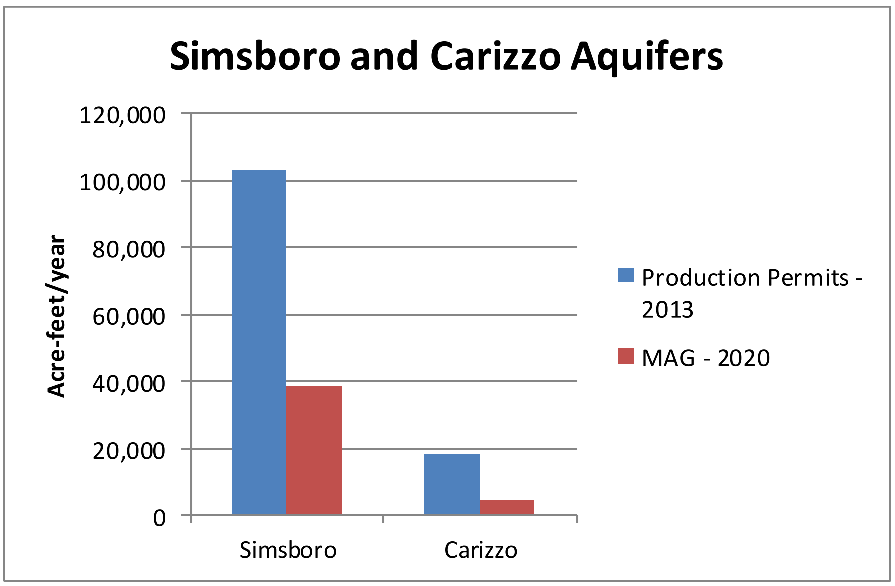
[illegible] and was selected for the graphs because it is closest in time to today.

MAG is defined as [illegible] produced on an average annual basis to achieve a desired future condition established under S[illegible] (Texas Water Code Section 36.001)

Furthermore, Texas Water Code Section 36.1132 states that [illegible]A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition [DFC] under Section [illegible]

I submit that the District has recklessly used Rule 5.1.2 to issue production permits which exceed MAG (*I define as overpermitting*) to such an extent that the DFCs for the Simsboro and Carrizo Aquifers will not be achieved.

Figure 2 demonstrates that the Production Permits exceed MAG-2020 by 169% for the Simsboro Aquifer and 294% for the Carizzo Aquifer.



<u>Figure 2</u>: Comparison of Production Permits and MAG for the Simsboro and Carizzo Aquifers within the District. The Production Permits totals were calculated using the District's Permits and Pumping July 2013 File (See Appendix 2). MAG[illegible]2020 was determined from the GAM Runs and GTA Assessment cited for Table 8- [illegible] (See Appendix 3).

NOTE: *The Production Permits totals for the two aquifers may be higher than displayed because the source aquifer for 10,291 acre-feet/year of production permits is not identified in the District's Permits and Pumping July 2013 File.*

A recent PowerPoint presentation by LBG-Guyton to GMA 12 provided strong support for my [illegible] of the Simsboro and Carizzo Aquifers will prevent the adopted DFCs from being achieved and will not protect our groundwater. The presentation was delivered on February 25, 2015 (*See Appendix 4*).

In the February 25 presentation, predictive pumping scenarios 1 and 3 roughly approximated [illegible] current production permits for the Simsboro and Carizzo Aquifers.

Both scenarios 1 and 3 predicted that the 2070 drawdowns would exceed the 2060 DFCs by at least 59% for the Simsboro Aquifer and 71% for the Carizzo Aquifer – *see Figure 3*.

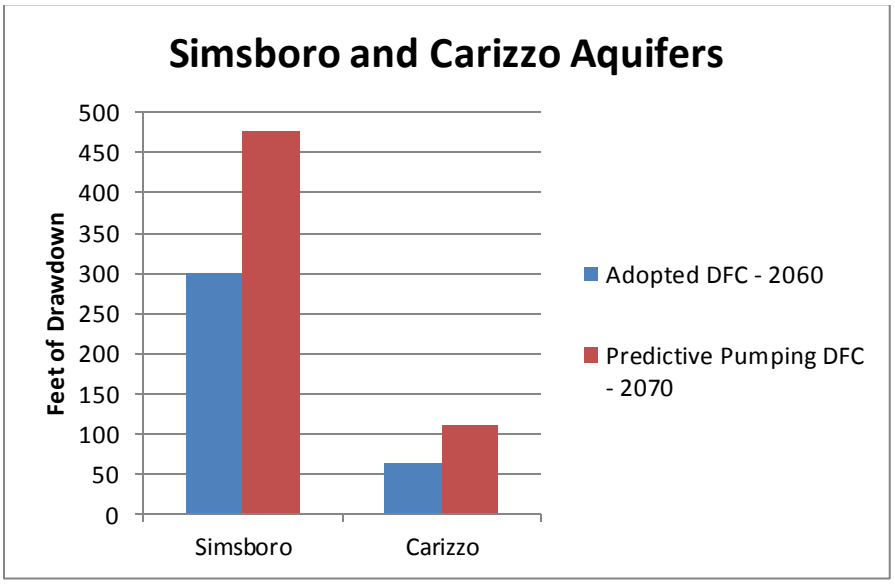


Figure 3: Comparison of [illegible] and a DFC based on predictive pumping (See last two pages of Appendix 4). The adopted DFCs for 2060 for the Simsboro and Carizzo Aquifers are 300-foot and 65-foot drawdowns, respectively (See Appendix 5).

The overpermitting problem is exacerbated by wells operating with *historic use permits* since [illegible] permit wells will be regulated to achieve the DFCs and protect our groundwater.

Historic use permit wells account for more than 36% of the total permitted production and 20% and 14% of the production permitted for Simsboro and Carizzo Aquifer wells, respectively (*See Appendix 2*).

Almost every rule [illegible] historic use wells are exempt from the rule.

The exception is Rule 7.1.8 which only states: [illegible]

There is no historic permit-related rule that defines the steps that the District will take when action is needed to achieve the DFCs and protect the groundwater.

Rule 7.6:

[illegible] summarized in an article written by District General Manager Gary Westbrook and published in the September 6, 2012, edition of *The Cameron Herald.* He wrote:

> [illegible]*nder these Rules of this District, anyone who has the land can obtain the permit for that amount of water [the 2 acre-feet/year/acre as stated in Rule 5.1.2], regardless of who that person or entity is. No matter how large or small their acreage, everyone who desires to produce groundwater has that right protected and is treated the same* [illegible]

The general manager was also quoted in the January 8, 2009 edition of *The Bastrop Advertiser* [illegible]*nybody who asks gets a permit* [illegible]

The Distri[illegible] also voiced a similar conclusion [illegible] but his remarks also highlighted that [illegible] In an article published in the December 11, 2008, edition of *The Cameron Herald* and written by me, the following exchange was reported for the meeting where water-marketer Blue Water Systems was granted permits to pump and export 56,000 acre-feet/year of Simsboro groundwater:

> [illegible]*Director]* [illegible] *really nothing we can* [illegible]
>
> [illegible]

The [illegible] is not supported by Rule 7.6 which lists what has to be considered when deciding whether or not to grant a permit request. Rule 7.6 states:

> [illegible]n deciding whether or not to issue a well, drilling, transport, permit amendment or operating permit, and in setting the terms of the permit, the Board will consider Chapter 36, Texas Water Code, the District Act and Rules of the Post Oak Savannah Groundwater Conservation District rules, the application, and all other relevant factors, including, but not limited to, (1) the management plan; (2) the quality, quantity, and availability of alternative water supplies; (3) the impact on other landowners and well owners from a grant or denial of the permit, or the terms prescribed by the permit including whether

> the well will interfere with the production of water from exempt, existing or previously permitted wells and surface water resources; (4) whether the permit will result in a beneficial use and not cause or contribute to waste; and (5) if the applicant has existing production permits that are underutilized and fails to document a substantial need for additional permits to increase production. If no person notifies the general manager of their intent to contest the application, and if the general manager does not contest the application, the application will be presented directly to the Board for a final decision. The Board may grant or deny the application, in whole or in part, table or continue the application to hear additional evidence, or refer the application to the hearings examiner for a complete hearing. Applications will not be considered administratively complete until all applicable fees are paid to the District. ❦

Although Rule 7.6 clearly provides the directors with the authority to deny a permit for several reasons, to the best of my knowledge there has been no permit request denied except for instances where a historic use permit was denied. Based on the published comments of the [illegible] and attorney cited above, Rule 7.6 has been pre-empted by the [illegible] District.

In addition, Rule 7.6 is deficient since it does not reference DFC or MAG as factors to be considered for approving a permit application.

Other groundwater districts have rules which do require consideration of DFCs and MAGs when deciding whether or not to grant a production permit request. For example, Lost Pines Groundwater Conservation District Rule 5.2.C.8 requires the following to be considered when considering a permit application: ❦whether granting the application is consistent with the [illegible]-term basis to achieve an applicable Desired Future Condition, considering: (a) the Modeled Available Groundwater determined by t[illegible]

In summary:

1. The exclusion of the requirement to consider DFCs and MAGs in Rule 7.6 renders Rule 7.6 ineffective in assisting the District to achieve the adopted DFCs.
2. The enforcement of Rule 7.6 would have decreased the present overpermitting of the Simsboro and Carizzo Aquifers.
3. Since requiring compliance with Rule 7.6 was sidelined because of the District [illegible] our groundwater is not adequately protected.

Section 16 of the Rules:

The mantra of the District consists of two parts:

- *The first part of the mantra* and an illusion of protecting private property rights is provided.
- The second part of the mantra

The District rules as a *I agree with this prediction.*

Section 16 of the rules

Because the District does not limit the number of 2 acre-feet/year/acre production permits that they grant, one would assume that Section 16 would be a pristine example of response planning.

Instead, Section 16 is so convoluted and poorly written, it is almost impossible to understand what the District plans to do when the aquifers drop to red-flag levels – or when they plan to do it. There is no clear path included in Section 16 for how the District is going to respond when the overpermitting comes home to roost.

So, I will highlight some of what I consider the main problems – and ask you to read Section 16 (*See Appendix 6*) in its entirety to understand why I believe that Section 16 rules are not designed to achieve the DFCs and protect our groundwater.

Rule 16.4:

Total estimated annual production is one of the triggers that the District plans to use to determine when to initiate their undefined actions to protect the aquifers.

Although the District requires meters on non-exempt wells, they appear to rely on well owners to report groundwater production to the District as required by Rule 7.15.

Rule 7.15 states:

> Within 15 days of January 31 of each year, each permittee must submit a report to the District, on a form provided by the District, stating the following: (1) the name of the permittee; (2) the operating permit number; (3) the well numbers of each well for which the permittee holds a permit; (4) the total amount of groundwater produced by each well

or well system during each month of the immediately preceding calendar year; (5) the total amount of groundwater produced by each well and well system during the immediately preceding calendar year; (6) the purposes for which the water was used; and (7) any other information requested by the District. ❦

Based on the groundwater production data recorded in the District's Permits and Pumping July 2013 File (*See Appendix 2*), I [illegible] annual [illegible].

My study of the production data in the July 2013 File found the following:

1. There are 720 wells on the permitted list – but only 460 on the production list.
2. Of the 460 wells on the production list – only 326 had reported production.
3. Together, the results presented in 1 and 2 mean that only 326 of the 720 (45%) wells on the permitted list pumped any groundwater in 2012.
4. Total 2012 production for all aquifers was 28,909 acre-feet even though 190,200 acre-feet were permitted for all aquifers – which mean that only 15% of the permitted production was actually pumped in 2012.

These results do not make sense and raise serious doubts [illegible] estimated annual [illegible] our groundwater.

The other methods listed to determine the ❦hreshold [illegible] also have serious drawbacks.

For example, a [illegible] either how many or the locations of the monitoring wells that will be used to determine the drawdowns.

Also, there are undefined actions with undefined time limits linked to the thresholds for action.

Other critical details are omitted including:

- The specific actions planned for reducing the pumping when the first two threshold levels are exceeded.
- The person responsible for tracking the different thresholds mentioned in Rule 16.4 and the person responsible for initiating action.

Rule 16.4 reads as a preliminary draft even though the District has been in existence since 2003. It does not map definable responses, leaves the aquifers exposed to undesirable consequences, and is not designed to achieve the DFCs.

Rule 16.7:

Although not clear, I believe that Rule 16.7 contains [illegible] for responding when the DFC is nearly reached which is identified [illegible] from Rule 16.4.

Sections 3 and 4 of Rule 16.7 lay out planned responses by the District:

> "RULE 16.7 - PERMIT LIMITATIONS AND REDUCTIONS**.** The maximum allowable production of water authorized by a permit may be limited, adjusted and reduced as follows: "
>
> 3. The volume of water authorized by permit to be produced in a Management Zone may be reduced by up to two percent per year with the reduction beginning twelve months after a decision by the Board that such reduction is reasonably required for the conservation and preservation of groundwater, or the protection of the aquifer or groundwater users, within the Management Zone; and
> 4. If the Board finds it is necessary to reduce the maximum allowable production per acre, or the permitted production for any Management Zone, more quickly than is provided in Rule 16.7(3), to preserve and conserve groundwater or protect groundwater users within a Management Zone, or to implement reductions required under Rule 16.5, the Board shall establish a schedule for a phased reduction in the maximum allowable production or permitted production for the zone."

I argue that this rule will be ineffective in achieving the DFCs and protecting our groundwater.

BASIS FOR THE PETITION [illegible]Part 2:

[illegible] rules and undefined responses to red-flag water level decreases, water-marketer Blue Water Systems has a defined response plan with a crystal clear goal of producing the amount of groundwater that they desire. And they plan to use all [illegible]

Importantly, Blue Water Systems [illegible]plans as discussed below support my conclusion that the [illegible]

Rule 5.1.2 (the 2 acre-feet/year/acre rule) allowed Blue Water Systems to acquire permits to pump the entire Simsboro and Carizzo Aquifers [illegible]MAGs by only having to lease the [illegible]

By leasing 35,500 of the 1,088,000 acres [illegible] granted permits to pump 71,000 acre-feet/year of Simsboro and Carizzo groundwater. That means that about 1,000,000 acres of groundwater rights remain in the District for landowners to use, lease, or sell.

Blue Water Systems has a contract with San Antonio Water System which requires them to pump 50,000 acre-feet/year of Simsboro and Carizzo groundwater on the first day of pumping groundwater from the District to San Antonio. This means that the 2020 MAGs for the Simsboro and Carizzo Aquifers will be exceeded on the first day of pumping which is planned for 2019.

If Sections 1.a and 2.a of Rule 16.4 are used, one would state that Threshold Levels 1 and 2 would be exceeded on Day One of the pumping to San Antonio. Those two sections state that [illegible] or 85% of MAG, Threshold Levels 1 and 2, respectively, is breached. In this situation, there is [illegible] estimated annual prod[illegible] acre-feet of groundwater.

However, it is not certain that the District will conclude that Thresholds 1 and 2 would be exceeded in this case because there are a total of seven triggering events outlined in Rule 16.4 [illegible]and there is no provision to explain which triggering event takes precedence.

[illegible]one step further and assume that the District decides that the drawdowns exceed [illegible]hreshold Level 3 [illegible]and they implement Rule 16.7 to reduce pumping by the maximum of 2%.

[illegible] would decrease the production permits to 1.96 acre-feet/year/acre which would reduce Blue Water Systems [illegible] by 1,420 acre-feet/year from their 35,500 acres of groundwater leases.

Even though the drawdowns would be nearing the DFCs and the District had determined that [illegible] Blue Water Systems is depending on the District to [illegible] policy instead of enforcing Rule 7.6.

In fact, District General Manager Gary Westbrook confirmed that t[illegible] pumping is being cutback when he wrote in the September 6, 2012, edition of *The Cameron Herald*:

> *[illegible] to achieve the protection of these water levels, and even after reduction or curtailment begins, any person applying for a permit will be able to produce the same amount of water per acre as those holding pre-[illegible]*

So, to make up for the loss of 1,420 acre-feet/year of groundwater production, Blue Water Systems would use 724 [illegible] new production permits (724 acres X 1.96 acre-feet/year/acre = 1,420 acre-feet/year).

And the District would [illegible]

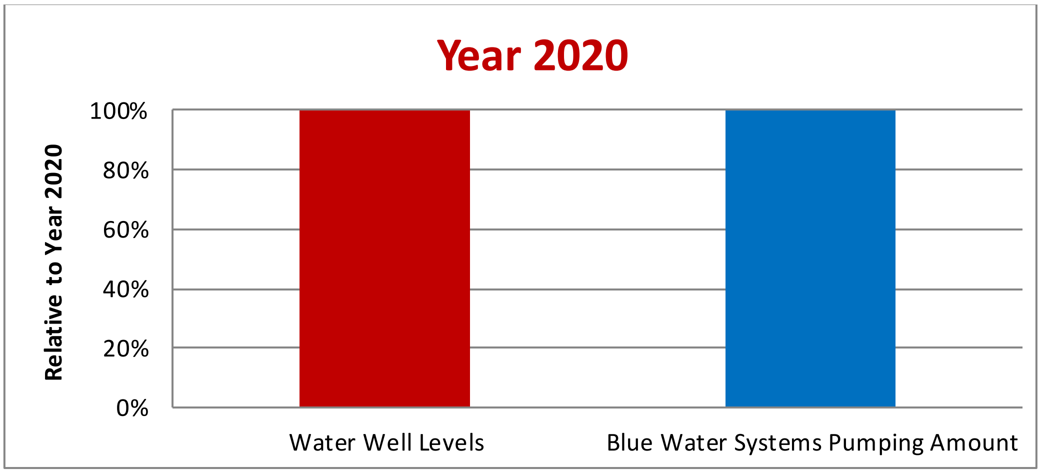
This sequence of actions could be used repeatedly by Blue Water Systems and anyone else in the District to compensate for any pumping cutback. These actions would allow anyone including Blue Water Systems to continue pumping their targeted amount of groundwater even while the aquifers are being depleted.

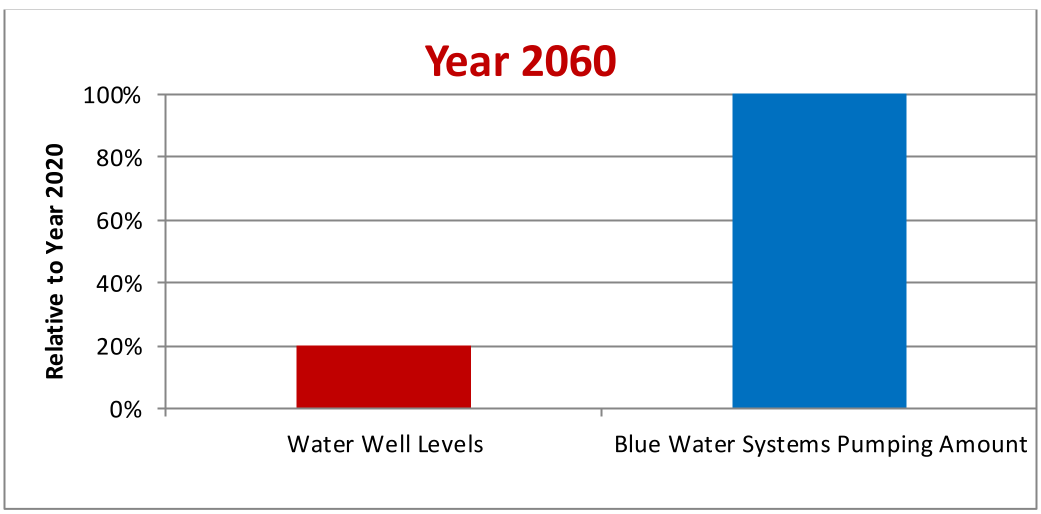
[illegible] their enforcement are not modified, *Figure 4* conceptually illustrates what could happen to the water well levels and Blue Water Systems pumping over a period of forty years.

Figure 4:

The Scenario: *From 2020 to 2060, the following sequence of events is repeated continuously: o ⇅⇅ixℸIiⅫ IX⇑ Ц⇠⇍⇅ ⊓ ⇄⅞⇅⅓oIXx⊓5₵⇑₵⇑д⇑гЦдÅixℸIiⅫ ⊓. ⅓ º Ц⇑ Systems requests IIX ixℸIiⅫ ix⇑I₵⇅ ⅫI ⇄IXℸ⇄Ц⇑⅛Ц⇅⊓5₵⇑₵⇑ЦixIX⇅ the new permit requests ⊓ repeat.*

The end-result: *The aquifers are IIX ixIX д⇑o г⇑. ⅓ º Ц⇑{⇑ I⇅ixℸIiⅫ is protected.*





Blue Water Systems actually included a statement of their successful lobbying of the District in their July 2011 proposal sent to San Antonio Water System. The proposal was named the ⅏₵⇑Цw⅛т w⊤₵IXIЦ⅓{ ⅁ix⅓⊥ ⇑IXд⇑⅏ЦI⅛ ⇅⅁ I₵⇑o г⇄Цix₵⇑I ⇅⅁ixIX. ⅓ º Ц⇑{⇑ I⇅ and Abengoa. I accessed the proposal by using a public information request.

In their proposal, Blue Water Systems stressed that they made sure that the District was doing things the right way:

> *[illegible] POSGCD [the District] to ensure its policies support the reliability and value of the permits granted. [illegible] (Page 26 of proposal)*

On Page 30 of the $3.4 billion proposal, they provided clear confirmation [illegible] rules and groundwater management policies are exactly what Blue Water Systems wanted:

> *[illegible] rate is not expected to change within the foreseeable future, POSGCD rules allow a maximum reduction in the allocation rate of no more than two percent per year. Any such future reduction in the allocation rate by POSGCD would have little impact of the Vista Ridge RSP [Vista Ridge Regional Supply Project] to maintain their permitted production rate because of the magnitude of this excess acreage. POSGCD allows water rights holders to apply for permits at any time, even during times of allocation reduction. Therefore, were a reduction to be imposed, the Vista Ridge Consortium would apply for additional production permits using a [illegible]*

I cannot summarize the problems we are facing any better than this excerpt.

CONCLUDING NOTES:

If the District had created rules to allow everyone the right to pump a sustainable amount of groundwater, this *Petition for Inquiry* would not have been needed.

For example, if the District had divided the MAG for the Simsboro by the number of acres above the Simsboro and used the quotient as the amount of acre-feet that one could annually pump per acre, they could have maintained their [illegible] policy, preserved [illegible] to pump groundwater, AND achieved the DFC while protecting our groundwater. All of the convoluted Section 16 rules could have been deleted because the MAG would have been the [illegible] been pumped from the entire District.

Instead, the District has failed to correct its institutional problems – and has turned a deaf ear to my and others' repeated requests to change the rules and groundwater management policies. In my mind, I have no other recourse than to submit this *Petition for Inquiry* to ensure that our aquifers are conserved and protected for future generations.