

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

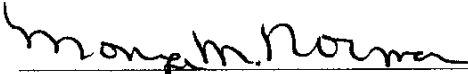
groundwater to meet the needs of this state and use the best available science in the conservation and development of groundwater,” pursuant to §36.0015 of the Texas Water Code, as amended by the 84th Legislature in its passage of HB 200 (effective September 1, 2015). Groundwater districts have an array 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 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 12th day of March, 2018, to the representatives listed below:

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seeking a review of Post Oak Savannah Groundwater Conservation District

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