

<p><b>REQUEST FOR INQUIRY</b></p> <p><b>FILED BY</b></p> <p><b>FRED C. RUSSELL</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>BEFORE THE</b></p> <p><b>TEXAS COMMISSION ON</b></p> <p><b>ENVIRONMENTAL QUALITY</b></p> <p><b>DOCKET NO. 2018-0194-MIS</b></p>
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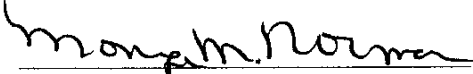
**AMICUS SUPPORT OF THE  
FAYETTE COUNTY GROUNDWATER CONSERVATION DISTRICT**

The Fayette County Groundwater Conservation District (“Fayette County GCD”) provides amicus support to the Post Oak Savannah Groundwater District (“Post Oak Savannah GCD”) regarding the Texas Commission on Environmental Quality’s inquiry in response to the petition filed by Fred C. Russell. The Fayette County GCD is in Groundwater Management Area 12 with Post Oak Savannah GCD. Although the two districts do not border political boundaries, they do share the Carrizo and Wilcox aquifers; Fayette County currently does not use the Wilcox aquifer due to high mineralization. Production of these aquifers in the Post Oak Savannah GCD may not directly affect aquifer conditions in Fayette County, however, the Fayette County GCD shares the concern of proper management of the Carrizo and Wilcox aquifers with Post Oak Savannah GCD and the other members of GMA 12. Fayette County GCD’s support for Post Oak Savannah GCD’s rules is based on the following reasons:

- (1) 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.
- (2) the Post Oak Savannah GCD’s acre-feet/acre production permitting rule complies with §36.116, Texas Water Code;
- (3) the Post Oak Savannah GCD’s acre-feet/acre production permitting rule helps to enforce desired future conditions by spreading out production significantly, based on control of groundwater rights, compared to the Rule of Capture that was previously in effect;
- (4) the Post Oak Savannah GCD’s acre-feet/acre production permitting rule acknowledges Texas’ new laws for 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), as well as the latest regulatory takings opinion in *Edwards Aquifer Authority v. Bragg*.421 S.W.3d 118 (Tex. App.—San Antonio 2013, pet. denied);

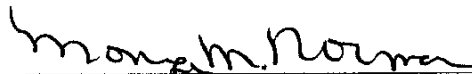
- (5) Post Oak Savannah GCD has a comprehensive well monitoring system to analyze aquifer water levels and potential damage to its aquifers, as part of its program to achieve its adopted desired future conditions. Post Oak Savannah GCD also works closely with its hydrologists by funding studies of the effect of future pumping on its aquifers and existing wells;
- (6) Post Oak Savannah GCD's rules allow the District to initiate curtailment of groundwater production in response to aquifer level monitoring and to reasonably protect existing wells, in compliance with §36.113, Texas Water Code;
- (7) Post Oak Savannah GCD's rules appropriately base curtailment of groundwater production decisions on actual aquifer level and interference data, and not just the TWDB's Groundwater Availability Models. In the development of desired future conditions under §36.108, Texas Water Code, and the permitting of wells under §36.1132, Texas Water Code, Modeled Available Groundwater is only one of the requisite considerations. Permitting and curtailment are not required to be solely based on Modeled Available Groundwater, but should also be based on actual data, not just models.

For the above-listed reasons the Fayette County GCD supports the Post Oak Savannah GCD's rules and its use of the regulatory tools provided in Chapter 36 of the Texas Water Code to enforce the adopted desired future conditions, while recognizing Texas property rights in groundwater.

  
Monique M. Norman

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Amicus Support of the Fayette County Groundwater Conservation District, regarding Docket No. 2018-0194-MIS, by email or first class mail on this 9<sup>th</sup> day of March, 2018, to the representatives listed below:



Monique M. Norman

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TCEQ Docket No. 2018-0194-MIS

Petition for Inquiry filed by Fred C. Russell

seeking a review of Post Oak Savannah Groundwater Conservation District

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