

<p>REQUEST FOR INQUIRY</p> <p>FILED BY</p> <p>FRED C. RUSSELL</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>BEFORE THE</p> <p>TEXAS COMMISSION ON</p> <p>ENVIRONMENTAL QUALITY</p> <p>DOCKET NO. 2018-0194-MIS</p>
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PETITIONER’S RESPONSE TO THE EXECUTIVE DIRECTOR

Petitioner Fred C. Russell’s reason for disagreeing with the Executive Director’s recommendation to dismiss the Petition for Inquiry in the matter of Docket No. 2018-0194-MIS regarding the Post Oak Savannah Groundwater Conservation District (“Post Oak Savannah GCD”) directed to the attention of the Texas Commission on Environmental Quality is as follows:

The premise that Post Oak Savannah GCD can approve a permit that **vastly exceeds** the Modeled Available Groundwater (MAG) in the

- Carrizo Management Zone by 8,000 to 10,000 acre-feet per year for the next five (5) decades and the
- Middle Wilcox (Simsboro Formation) Management Zone by 5,000 to 7,000 acre-feet per year for the next three (3) decades is ludicrous.

What this implies is that over-permitting an aquifer is the “way to go.” It allows Post Oak Savannah GCD to collect as many production and transportation fees as possible until production starts and a Management Zone cutback is announced. Next, the Post Oak Savannah GCD will apply Rule 7.6 and “curtail” this excessive production and our DFCs will return to normal.

BlueWater Systems, Garney Construction, and the San Antonio Water System will acquiesce by saying, “the rules are the rules.” Never mind the \$3.4 billion spent building the 142 mile long pipeline or the contiguous 25,000 acres of groundwater rights leases that BlueWater Systems holds. This implies that Texas Courts will disregard ownership of these 25,000 acres of groundwater as “real property” as stated in the *Texas Water Code 36.002 Ownership of Groundwater* and Post Oak Savannah GCD’s Rule 7.6 will return groundwater in the affected aquifer to normal levels.

Paraphrasing § 36.002

The groundwater ownership and rights described by this section entitle the landowner, including a landowner's lessees, heirs, or assigns, to **drill for and produce the groundwater below the surface of real property.**

In the *Texas Water Code* “District” means any district or authority that has the authority to regulate the spacing of water wells, the production from water wells, or both. Post Oak Savannah GCD has failed to regulate the “production from water wells” and when the Vista Ridge Regional Supply Project starts production, the Carrizo

and Simsboro Aquifers along with landowners in Milam and Burleson Counties will be adversely impacted by this.

In September of 2004 Bluewater Systems obtained the permit for the Vista Ridge Regional Supply Project. The legal agreement for the Vista Ridge Regional Supply Project is the **Water Transmission and Purchase Agreement**. In this agreement is the **Transaction Form E Groundwater Supply Agreement** which establishes 50,000 acres of groundwater rights leases to be kept available to support the Annual Supply Amount for the Vista Ridge Project. This 50,000 acres is **twice** the amount of acreage needed and would **support a 100,000 acre-foot permit** at the Post Oak Savannah GCD. The 25,000 acres of additional leases has been understood from the beginning as **insurance** against a Management Zone cutback. BlueWater Systems would simply apply for an additional permit to makeup for any cutback. Without this insurance, SAWS would not have approved the Vista Ridge Regional Supply Project. With this insurance, SAWS will go to the Texas Supreme Court to litigate any permit denial. With the cost of the 142 mile long pipeline at \$3.4 billion, the **San Antonio Water System must use any and all available means to insure they receive 50,000 AFY.**

Knowing all of this, what has the Post Oak Savannah GCD done to prevent the future circumvention of their rules regarding another permit for BlueWater Systems during a Management Zone cutback? What new rules have been proposed to prevent this circumvention? The answer - **Nothing has been proposed or done!**

That brings up the next question - **Why hasn't anything been done during the last thirteen (13) years** toward stopping future circumvention of a Management Zone cutback? The answer is simple - any new rules prohibiting **a new permit in support of an existing permit** would jeopardize the Vista Ridge Regional Supply Project causing it to cease and desist. The San Antonio Water System would look for another source of water for the City of San Antonio.

Why would this be a problem for a District that promotes: **Conservation, Preservation, Protection, Recharging, and Prevention of waste of groundwater, and to Protect groundwater users?**

IT'S THE MONEY! BlueWater Systems won't pay permitting fees of \$1.96 million annually when Vista Ridge ceases to exist. Post Oak Savannah GCD, under present management, has become the **Post Oak Savannah Self-Serving GCD!** The **amenities** are plentiful when the **State of Texas** gives a Groundwater Conservation District the right to access fees on the permitted amount of production and transportation of groundwater **without sufficient oversight.**

The Post Oak Savannah GCD does not support the conservation of our aquifers or the protection of groundwater users. The current rules and the interpretation of those rules at the Post Oak Savannah GCD are untenable. I am hereby respectfully requesting that the Texas Commission on Environmental Quality rule against Post Oak Savannah GCD in this matter and require the necessary remedial actions be taken.


Fred C Russell, Petitioner