

Comments received and responses given

**Comment or Question**

POSGCD has over permitted aquifers, i.e., POSGCD has permitted an amount of production which exceeds the Modeled Available Groundwater (MAG) of an aquifer as determined by the Texas Water Development Board (TWDB)

**Response or Action to address comment or question**

Chapter 36, Texas Water Code, (TWC) specifically charges groundwater conservation districts to permit to the extent that all uses of groundwater will achieve an applicable Desired Future Condition (DFC) established in the joint planning process of Groundwater Management Area 12 (GMA 12). MAG is not intended to be used as a cap for permitting by a GCD. MAG is to be considered as *one* of *several* factors outlined in Chapter 36, TWC, to be considered in granting or denying an application for production.

POSGCD has no mechanism in its rules for curtailment of production which will be effective against production by Vista Ridge when Vista Ridge adds additional acreage to its permitted production to satisfy POSGCD requirements

POSGCD Rules, Section 16, when applied to the goal of achieving DFCs, Protective Drawdown Limits (PDLs), and other management goals of the District, contains options which provide flexibility to the Board of Directors, allowing for adjustment of permitting strategies within an aquifer and/or management zone to accomplish the goals and mission statement of the District with respect to protection of water levels in aquifers of the District.

POSGCD cannot restrict production of Vista Ridge due to ownership of groundwater as described in Section 36.002, TWC.

Section 36.002, TWC, recognizes the rights of a landowner and their assigns and heirs to capture and produce the groundwater beneath their property under subsection (b); the same section under subsection (b-1) also makes it clear that ownership does not entitle the landowner to a specific amount of production. Subsection (d), coupled with 36.0015(b), TWC, establishes the authority of a GCD to regulate the production of that property right as outlined in other sections of Chapter 36, TWC.

POSGCD cannot restrict production of Vista Ridge due to ownership of groundwater as described in the findings of 2 recent supreme court cases.

Without case names, it is unknown which cases are definitively being referred to. POSGCD's Rules do not treat landowners differently in management of groundwater resources except where specifically allowed in Chapter 36, and presently none of the management practices outlined in POSGCD's Rules have been addressed to date in a way that appears inconsistent with Supreme Court cases.

POSGCD cannot restrict production of Vista Ridge due to absence of effective rules of the District.

POSGCD's Rules and management practices have been reviewed by the Texas Commission on Environmental Quality (TCEQ) during the process of considering Petitions filed by landowners in the District citing these same issues on two different occasions, with TCEQ finding both times in favor of the District and citing that the Rules and Management Plan were sufficient to achieve management goals required by Chapter 36, TWC. Also, the Texas Water Development Board, during its review of POSGCD's Management Plan has deemed the District's management sufficient to comply with Chapter 36, TWC. Finally, the office of the Texas State Auditor reviewed the District's Management Plan during 2018 to consider whether the District was in compliance with the requirements of its Management Plan and found in each and every instance considered that POSGCD was in full compliance.

District Directors and Staff cannot participate in programs of the District such as the Aquifer Conservancy Program (ACP) due to conflict of interests as outlined in State law and the District's policies

Chapter 36.058, TWC, addresses conflicts of interest, citing to Chapter 171 and 176 of the Texas Local Government Code (TLGC). Per 171, TLGC, conflicts of interest *potentially* arise in instances where Directors are singled out for benefits arising directly to them and/or their families (first degree consanguinity/affinity) as a result of their position with POSGCD. As the ACP is a program that *anyone* who owns land and groundwater thereunder in the particular area outlined by the ACP is allowed to participate in. The Directors and Staff are not solely the beneficiaries, but among numerous others who have agreed to place their property rights into a conservation to preserve them.