

Proposed Desired Future Condition(s) for Aquifer(s) in GMA 12

Simsboro Aquifer Water Defense Fund

Considerations 1, 2, 3, 4, 6, 7, 9

Submitted February 12, 2021 (Agenda Item 9)

Contact Information:

Name: Andrew Wier, Director, and Michele G. Gangnes, Director

Address: P.O. Box 931, Elgin, Texas 78621

Phone: 512-426-5002 (Wier, V/T)

512-461-3179 (Gangnes, V/T)

Email: info@simsborowaterdefensefund.org

Representing: Simsboro Aquifer Water Defense Fund

Summary of Concerns

The Simsboro Aquifer Water Defense Fund (SAWDF), formed in 2016, is an all-volunteer organization. Our ability to respond on the many fronts where we hope to have an impact, has been compromised by the pandemic and rearranged priorities. We apologize for monitoring rather than directly participating in the current GMA 12 DFC review process until now.

We believe the district members of GMA-12 need to hear from us at this particular time, because of certain exigent circumstances in two member groundwater districts in GMA-12 that bear on your current review and deliberations on new DFC.

We assert that *data from recent events* in the GMA-12 member districts indicates unreasonable impacts from pumping our local aquifers ---impacts that were not contemplated, and that accordingly were not considered in the prior DFC review --- have in fact occurred. They necessitate a thorough review of these impacts and their implications in the current DFC review. These impacts are *unreasonably affecting residents of the so-called "rural source counties"* (we call them the "donor counties") of massive, long-term municipal water supply projects outside those counties. The permittees of such projects intend to continue this pumping for decades, no matter the impacts on the donor communities.

Based on the fact serious negative impacts of pumping 50,000 AFY under the Vista Ridge permit in the Post Oak Savannah Groundwater Conservation District (POSGCD) *almost immediately* surfaced in local exempt wells (in POSGCD as well as in the Lost Pines Groundwater Conservation District [LPGCD]), after the mid-2020 commencement of full production under that permit, indicates that the existing DFC must be revisited. These impacts must be *taken into account in the setting of new DFC*.

Three more permitted or pending projects in LPGCD ultimately could add almost 100,000 AFY to pumping in the Simsboro, much of it in Lee County where Carrizo wells have already gone dry due to pumping of just 15,000 AFY in the Carrizo by Vista Ridge. This indicates the urgency of “getting it right” in this round of DFC, which is virtually the only management tool permitting authorities can rely on to carry out their mission of protecting the local water supply.

It appears from the record of the meeting that the member districts in GMA-12 were not fully aware of these recent events as of their last meeting, namely the actual well failures that have occurred, based on the absence of any discussion of actual “conditions on the ground” in POSGCD during a lengthy discussion of possible changes to the POSGCD DFC. This seems like an important omission, and we don’t know why the omission occurred, when either or both general managers of POSGCD or LPGCD could have raised this important information to give more context to the overall discussion of pumping files and what data should be used to set DFC.

Bottom line, we refer you to the January 19, 2021 letter from POSGCD Board member Steven Wise to the LPGCD, on which all members of GMA-12 were copied, for information on POSGCD wells. The letter is attached as Appendix 1.

We believe GMA-12 members have also seen the November 19, 2020 letter from legal counsel for Vista Ridge, attached here as Appendix 2, which addressed some of the DFC issues in POSGCD.

Other than to appoint some form of well monitoring committee in response to the Lee County well issues, we are not aware of any formal communications by LPGCD to GMA-12. We attach as Appendix 3 and 4, respectively, a media release by SAWDF, dated January 8, 2021, and an article which appeared in this week’s Giddings Times & News, both of which address the Lee County well issues. SAWDF has inquired of local well drillers as to how the situation stands now, but we don’t expect to receive any response until next week at the earliest.

We acknowledge that this raw data must be evaluated, but we hope GMA-12 will do so with fairness, honesty, accountability and transparency. When you review the existing DFC in order to determine new DFC, please consider whether they can be vindicated as reasonable when you consider the factors to be considered under Texas Water Code Section 36.108(d)(1)-(9) with the following focal points:

- Aquifer uses and conditions relevant to domestic and livestock exempt wells and their owners in GMA-12, specifically in LPGCD and in POSGCD, in light of immediate impacts on those wells produced by just one mega-project. See Appendix 1, 2 and 3 for context for all of these Considerations.
- Water supply needs of such wells and owners, and water management strategies that affect them
- Hydrological Conditions that affect such wells’ ability to produce water at a reasonable cost --- at what point does the loss of 100-feet plus of hydraulic head in the Carrizo cause

irreparable harm? Are there wells in the shallower portion of the Carrizo that are actually being dewatered? Is this a cautionary tale for the Simsboro which is under much greater production pressure than the Carrizo with respect to the Vista Ridge project, and will be under exponentially more production pressure if other local projects come on line?

- Environmental impacts on the ecological systems that rural communities in those districts value, use and depend on in those districts, including rivers, springs and streams, the relative health of which is an indicator of the health of interconnected aquifers
- Socioeconomic impacts on those well owners, their property, their communities and their economies, including this partial listing:
 - impacts of lowering water levels on costs of production, including costly well mitigation needs for sudden and precipitous losses of water due to heavy pumping elsewhere;
 - increased pumping lifts requiring unexpected cost for new equipment;
 - decreasing well yields and potential need to drill new well or wells;
 - potential for and additional costs of developing alternative supplies to meet water supply needs in order to avoid socioeconomic impacts of water shortages
- Private property impacts resulting in
 - infringement of private property rights, whether the landowner is producing water or not;
 - diminution in property values, perhaps including properties that are simply “in the neighborhood” of known well failures;
 - reduced suitability for livestock or agricultural pursuits;
 - marketability of property or inheritance value to future generations;
 - inability to produce water at a reasonable cost and with known parameters for drilling wells and staying in water;
 - impairment of ability or inability to conserve and preserve their groundwater resources, by those who either produce water at very measured rates or who seek to “leave it in the ground”, in each case as a contribution to conservation; and
 - the constitutionally impermissible “taking” of private property (groundwater) without adequate compensation.
- Other relevant information, including the specifics of the situation we address in these comments

Background Context for SAWDF

The Simsboro Aquifer Water Defense Fund (SAWDF) carries out its mission as a Texas nonprofit, qualified 501c3 organization on the basis of multiple levels of outreach, education and advocacy in central Texas communities; in administrative and judicial proceedings; with local and state officials; and in local government proceedings, including without limitation, groundwater conservation districts in GMA-12; and at the Texas Legislature.

We are governed by a board of directors comprised of veterans of local landowner efforts two decades ago to resist the ill-conceived, unsustainable “first” SAWS’ Simsboro project, with Alcoa as its partner. We are not a membership organization, but we do have a robust group of supporters throughout central Texas.

As an organization, we define our mission as the conservation and protection of aquifers and the interconnected surface waters of our aquifers, along with the protection of private property rights, in order to provide a legacy of aquifers that last forever, and to secure social and economic equity for our communities. As *landowners*, we and our constituents might describe our objectives this way:

“As landowners, we seek to be allowed to conserve our groundwater and protect our aquifers and our rivers, streams and springs, and we demand to have our private property rights protected. We seek empowerment of all landowners to steward both the groundwater and land that they own, and upon which we, and often our livelihoods depend, and which we desire to leave as a legacy of land and water for future generations.”

In SAWDF’s view, sustainability of our natural resources is the backbone of our Texas economy, our society and our environment, *as an inseparable triumvirate of priorities*.

What we and our supporters want most, is for our state policymakers, legislators, and regulators to decide that *ultimate sustainability* requires that our natural resources remain *resilient* along the way --- that our aquifers can still spring back *while they are being stressed by massive pumping*. We understand that development will occur, but maintaining resiliency of natural resources assures that we are achieving *sustainable development* of natural resources.

Sustainable development is the idea that human societies must live and meet their needs without compromising the ability of future generations to meet their own needs. If we, as a society, are to exist in the long-term, we have to prioritize preservation of those systems that ensure our survival.

Specifically, sustainable development is a way of organizing society so that it can exist in the long term. This means taking into account both the imperatives *present* and those of the *future*, such as the preservation of the environment and natural resources or social and economic equity.

Instead, our state policy is reflected in GMA-12 by a set of DFCs that permit *average* drawdowns of magnitudes that assume the *drastic* drawdowns and accompanying hardships for innocent well owners that will produce those averages, are reasonable and acceptable. *Essentially, we have been saying “We just have to pump and see what happens.”*

We urge instead a new mindset that could start with GMA-12 --- that we are not going to allow managed depletion (mining) of our aquifers, and that we will determine not only how much we want to *pump* but also how much we are determined to *conserve*. We must at least have two reference points at opposite ends of the spectrum if we are to find the “balance” between development and conservation that the Conservation Amendment to the Texas Constitution mandates.

We assert that, as described in more detail below, that the members of GMA-12 are required to do no less in carrying out not only their duties to set new DFC that are reasonable and capable of being achieved, but also in carrying out their regulatory function as the state's preferred groundwater managers.

Purpose of Comments by Simsboro Aquifer Water Defense Fund Offered as of February 12, 2021

On behalf of our organization as well as the hundreds of central Texas landowners who support us¹, the Simsboro Aquifer Water Defense Fund (SAWDF) offers these comments as a contribution to, and for inclusion in, all data, analyses, and supporting materials including policy and technical justifications considered by the District Representatives of GMA 12 in the current Desired Future Conditions review period.

Specifically, we intend our comments to respond to Considerations 1, 2, 3, 4, 6, 7, and 9, and, we expect in future, to Consideration 8 of Texas Water Code Section 36.108(d)(1)-(9). We respectfully request that GMA 12 consider this submission as important and significant to the GMA's deliberation and setting of reasonable ---and feasible ----Desired Future Conditions at the end of the current DFC review.

Bottom line, we recommend you think long and hard about allowing non-exempt permit "demands" of the proportions we are seeing in at least two groundwater districts in GMA 12, continue to drive your DFC process without a serious and intentional effort to achieve the balance of interests not only required by the Conservation Amendment, but also as *mandated* for the DFC process itself by Texas Water Code Section 36.108(d-2):

(d-2) The desired future conditions proposed under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area.

In the past, the member districts of GMA 12 and the Texas Water Development Board have used a handful of water rights to reverse engineer their aquifer management tools --- the DFCs and MAG ---and in turn, have forced the permitting process to struggle with, or in some cases, to capitulate to a magnitude of demand that is being allowed to dwarf local interests in the same aquifer.

Specifically, if predominantly based on a "demand" on our aquifers that is driven by the investment expectations of Wall Street investors in speculative projects that promise huge profits

¹ While we do not claim to have the direct proxies of the landowners whom we support, and who support us, they subscribe to the principles we are advancing here to the best of our belief, and they are aware of, and often participate in or otherwise support, our advocacy before governmental and quasi-governmental bodies such as GMA 12, in an effort to further their collective interests in conservation and stewardship of natural resources, and in their families' property interests. Hundreds of our constituents in the LPGCD formally protested a permit now pending in that district.

by first helping create and then satisfying, a questionable need in distant places, the resulting DFC will not have achieved the *mandatory* required balance.

In the ongoing DFC review, there must be some standards instituted ---bookends, if you will --- *on the front end of the DFC process*, before we can possibly know if we are achieving the “highest *practicable* level of groundwater production” that takes into account *all* interests in groundwater production and provides the requisite balance.

Otherwise, we are simply leaving the Rule of Capture virtually unregulated by a groundwater district except with the unproven, and likely unenforceable promise of “future cutbacks” of non-exempt permits. In the meantime, landowners are suffering uncompensated confiscation of *their* groundwater by those very same non-exempt permits, whether landowners are pumping their groundwater or not .

When groundwater districts construct our local future on the basis of this handful of water rights, they in turn handicap the permitting process from balancing those demands against a cumulative “investment expectation” of thousands of local residents, who in most cases have their life savings tied up in their land, and in the water to which their land must have access at a reasonable cost, to maintain the property’s value and to sustain it for future generations.

While the Groundwater Management Areas are believed by the Texas Water Development Board to not be vulnerable to a legal challenge to approved DFC², the member districts are vulnerable to “takings” claims, in addition to administrative proceedings in accordance with Texas Water Code Sec. 36.1083 related to the reasonableness of the DFC.

Context for the Comments of the Simsboro Aquifer Water Defense Fund

In the late fall of 2020, SAWDF was made aware of exigent circumstances by its constituent landowners that we are bringing to the attention of the member districts of GMA 12.

While the members of GMA-12 may be aware, as part of its DFC review process, of some of the “30,000 foot level” details of conditions on the ground in LPGCD and POSGCD, we believe you need to hear and consider the situation from the viewpoint of affected landowners themselves.

It is not coincidental that problems with local wells have arisen with the commencement of pumping of 50,000 AFY by Vista Ridge. Wells in northeastern Lee County, and presumably similarly impacted wells in Burleson County, have survived drought in prior years without going out of water or burning up pumps and melting pipes, or having pumps lowered so drastically, owners either have to re-drill or purchase bigger pumps to lift water from greater depths. That has now happened, at considerable cost, almost immediately, now that Vista Ridge is pumping in their backyards.

As we understand it, the Post Oak District has not declared that the district is at a point where the DFC are not being achieved, thus intervention by the District is not warranted. It is also our

² <https://www.twdb.texas.gov/groundwater/faq/faqdfc.asp>

understanding that so far, no mention has been made on the record at GMA 12 that wells in Burleson and Lee County are failing, and that the Post Oak District is mitigating wells in Burleson County by lowering pumps *by 200 feet* where possible³, indicating the likelihood of more drawdowns to come.

At the same time, well owners in Lee County have been told by Lost Pines, the district has no authority over Vista Ridge or its impacts on LPGCD constituents, and Post Oak is telling them that Post Oak has no duty to mitigate wells outside of the district.

We hope by this time in our commentary that you see what is wrong with this picture.

What is not obvious about this picture but should be, is the fact that setting DFC as an annual average drawdown, county wide or management zone-wide, works to the advantage of the big pumper but leaves a potentially wide margin of greater drawdowns that (typically) damage exempt well owners long before the average drawdown is breached. You seem unconcerned that these landowners are essentially expected to suffer in silence ---- one permit applicant in LPGCD has gone so far as to allow its consultant to say it's the *landowner's own fault for not drilling deeper in the first place, to protect themselves from that applicant, who has no responsibility to them.*

We assert that reverse-engineering of DFC without reference to proving that balance with the rights of the aquifers and the rights of others has been achieved, aids and abets unsustainable development of groundwater, to everyone's peril. It also lets that applicant's viewpoint flourish.

While our emphasis in these comments may seem to revolve around Considerations 6 (Socio-economic impacts) and 7 (Private property interests), it should be apparent that, with the possible exception of Consideration 5 (Subsidence impacts), we are raising issues that must be considered with respect to all of the other requirements of Section 36.108(d)(1)-(9).

We assure you that the typical landowner constituent of our organization feels strongly about all of the Considerations you will consider in proposing DFC that will greatly impact their futures.

SAWDF asserts that the existing DFC are not reasonable, on the basis of emerging evidence that they are not sufficiently protective of important interests of landowners and other residents of what might be called the "rural Carrizo-Wilcox Aquifer source water counties". SAWDF and other conservation groups prefer to more realistically call them the "donor communities" of groundwater from the central portion of the Carrizo-Wilcox Aquifer.

Their groundwater, their property rights, their livelihoods, their economy and their society has been targeted and is being exploited by irresponsible and ultimately unsustainable groundwater export projects. To add insult to injury, the two groundwater districts are not even giving them meaningful lip service --- we believe neither of them are being straightforward with either their own constituents or with their neighboring districts.

³ According to anecdotal reports of well drillers working in Burleson County.

Proposed Desired Future Condition(s)

Over a decade before SAWDF's inception, one of SAWDF's founding board members collaborated with Environmental Stewardship's Executive Director in crafting the following articulation of recommended groundwater policy. Environmental Stewardship included it in its October 28, 2020 submission of comments on the DFC review process to GMA-12. SAWDF approves Environmental Stewardship's statement, and also supports Environmental Stewardship's concerns about surface water systems.

Their statement bears repeating here:

[Environmental Stewardship's] "primary interest in this GMA-12 DFC review process is to protect the integrity and functioning of the ecological systems that form the basis of the Colorado and Brazos river basins and the Carrizo-Wilcox and associated aquifers for current and future generations. **In conformance with the Conservation Amendment of the Texas Constitution, it is the duty of Groundwater Conservation Districts to conserve and preserve the natural resources of the state -- our groundwater, our rivers, our springs, and our bays ... our ecosystems -- by passing laws, rules, and for the purposes of this effort, adopting desired future conditions, that achieve a balance between conservation and development of those resources *in perpetuity*. To protect our aquifers as we found them while respecting the ownership rights of landowners.**

Though the ability to preserve an aquifer for future generations is not totally in our control -- its rate of replenishment, and its hydrologic characteristics, are largely a function of Mother Nature and must be accepted and respected -- development of an aquifer, and ultimate depletion of an aquifer and/or the surface water and ecosystems which depend on groundwater, is the voluntary human action in which we are currently engaged.

The essence of conservation and preservation of an aquifer resource is that the rate at which we deplete our aquifers must be in balance with the protection of the aquifer. That the depletion not be driven only by the desire for development, against which we simply wait for damage to the aquifer's sustainability before attempting to bring it back "in balance". Only when a definite "conservation standard" describing a sustainable aquifer is established -- an aquifer that is preserved in perpetuity -- can we then determine how much of that aquifer we can develop in balance with the conservation standard. Conservation and protection of an existing aquifer for the *common good of future generations* must be the priority, not the *development* of an aquifer to satisfy every current and speculated human demand on it. Civilizations that have disappeared have failed to realize this distinction when they exploited natural resources."

SAWDF would only add that SAWDF has adopted the notion of "requiring and achieving *resilience*" of a natural resource as a way of describing how the (inevitable) development of an aquifer should be accomplished. Conservationists used to analogize developing an aquifer without regard to its recharge rate, to overdrafting a bank account by withdrawing funds at such a rate that an overdraft is inevitable if the account is not replenished --- and that not replenishing

overdrafts of an aquifer amounts to “mining” the aquifer, euphemistically referred to as “managed depletion”.

SAWDF would repeat that same analogy but would also introduce the idea that if replenishment of the bank account (or the aquifer) is accomplished with “overdraft protection”, that bestows an element of “resiliency” to the account and to the aquifer.

Merriam-Webster defines the adjective “resilient” as “characterized or marked by resilience, such as capable of withstanding shock without permanent defamation or rupture, or tending to recover from or adjust easily to misfortune or change.”

In short, you don’t just pump to find out how resilient and thus sustainable our groundwater is, you set up an overdraft protection system by achieving, at the front end with ongoing resets, a balance between development and conservation. This approach allows you to know you are achieving “the highest *practicable* level of development to meet the needs of the state”, because you have overdraft protection --- resilience provided by the amount you have determined to “conserve”.

SAWDF asserts that to do otherwise with an ancient aquifer whose ancient water you want to massively access without the aquifer’s ability to protect itself, is nothing but the “*voluntary human action*” that *Environmental Stewardship* warns about and which is the precursor to our repeating history by committing ecological suicide.