

**Comments to
Post Oak Savannah GCD Board
Regarding Proposed DFCs
July 13, 2021**

**Steve Box, Executive Director
Environmental Stewardship**

Environmental Stewardship is very concerned about the impacts that the Proposed desired future conditions will have on surface waters and especially the Colorado River and its tributaries during drought conditions. Though we have not had the opportunity to address this Board on this matter, we have commented on our concerns to the GMA-12 representatives, and we will be providing you with our written comments that will include this issue. We are requesting your support in developing DFCs that are protective of all surface waters in our management area.

In concert with our partner in the Water Defenders Coalition, we have been advocating that the Proposed desired future conditions be rejected and sent back to the GMA representatives for revision. We are requesting that this Board be one the first to take the steps necessary to make this happen.

So, I want to address an issue that is common to all of the groundwater districts within GMA-12 that alone, is adequate reason to reject the Proposed DFCs.

Let's face it, management policies and practices within GMA-12 and among its Districts are in a state of flux, largely because of the magnitude of challenging, and novel, issues faced by some of those districts and the GMA. Ultimately, all five districts may face these challenges, and it behooves them all to approach the issue from a commonality of interest.

Unfortunately, in this round of joint planning, an important concept has been overlooked, leading to an *error* that is embedded in the Proposed DFCs based on pumping file S-12. But I don't need to tell this Board about this problem or what damage might be expected from the adoption of the Proposed DFCs, because you are on the receiving end of this error. What I do want to talk about is what can be done about the situation — and I think Post Oak GCD has a role to play in making a mid-course correction.

Per the Texas Water Code, joint planning among districts is supposed to help all of the districts accomplish their *individual* management goals, as reflected in their management plans. Stated another way, the Code does not direct that a GMA --- which is not a legal entity --- be the tail that wags the dog. Instead, it is the other way around.

The Code directs that the district representatives, as a joint planning body only, are to *consider the effectiveness of the individual district management plans for conserving and protecting groundwater and preventing waste*. They are to do this by considering how the *individual district's management goals achieve that district's desired future conditions, how those DFCs impact on planning throughout the management area, and how effective these measures in the management area generally*¹.

Groundwater districts, not groundwater management areas, are the state's preferred regulatory managers of groundwater.

As a long-time stakeholder participant in the joint-planning process, it seems to me that much of what has occurred over this planning cycle has come about because the GMA group strayed from these statutory guidelines. The group has focused more on developing DFCs — as a decision-making body, which it is not — than on being a review and advisory group to assist the districts in developing DFCs that are compatible and workable for all the districts, thereby making management of the aquifers in our area more effective.

The GMA performed a very important role in the last round of review by recognizing that the Groundwater Availability Model (GAM) needed to be revised, so it could better serve the districts in developing accurate DFCs and in making permit decisions. Working with the TWDB and the districts, the representatives accomplished this task.

However, in this round of joint planning -- after working through critical factors necessary to adopt and use the new GAM, things seem to have become convoluted as the representatives started working on DFCs. Adapting from the old GAM to the new GAM brought unexpected challenges and threats of litigation further derailed the process.

The discussion between the GMA representatives reflected, what I consider, was a core weakness in the process. Having not gone through the steps necessary to *consider the effectiveness of the individual district management plans for conserving and protecting groundwater and preventing waste*, the representatives were not prepared to timely resolve key issues necessary to develop DFCs that were compatible and workable for all of the districts.

Had they, over the course of the previous planning cycles -- as directed by the Water Code -- considered *how the individual district's management goals achieve that district's desired future conditions, and how those DFCs impact on planning throughout the management area, and how effective these measures are in the management area generally*, they would have had the knowledge

¹ Texas Water Code, Chapter 36.108(c)(1-4)

and facts necessary to timely resolve the issues and avoid the error embedded in the Proposed DFCs.

As a result, the GMA stumbled, and ran out of time, as it tried to develop DFCs that were compatible, without damaging or interfering with the ways some of the districts are set up to manage curtailment.

It is not my intent or interest to lay blame on the district representatives or the districts themselves, but rather to shed light on the path that, in my view, led to the error that makes these proposed DFCs unacceptable and in need of revision. It is my hope that we can find a path forward that will make this GMA, and these five districts, resilient and able to manage the challenges that face us.

In this context, I am asking that Post Oak Savannah GCD take a leading role, as the coordinating district in GMA-12, in re-setting the course. The discussion at the June 24th meeting was a constructive first step. It seems that each district needs to lay out the basics of its management plan and implementing rules to the other districts so that the *likenesses* and *differences* are evident, and incompatible practices can be reconciled to the benefit of the individual districts and the management area as a whole. Further, that the GMA reflect on the functional purpose of DFCs -- *to conserve and protect groundwater and preventing waste as a constant target* -- not an ever changing target as new pumping is permitted. With this in mind, Environmental Stewardship and its coalition partner provided the GMA representatives² with what we consider is the best way forward in developing the revised DFCs, if our request to reject is successful, or, if not, to proceed during the next round of planning.

In this round of joint planning, it was inappropriate for the districts as a group to require that the member districts take a uniform approach across all of the districts to the pumping file -- the file upon which the desired future conditions are based. Each district is entitled to respond to its electorate to adopt its own pumping and curtailment strategy³. So, the pumping file for each district -- or the portion of the file that represents each district -- should reflect each district's own approach. It makes perfect sense to be different from one district to another, just as aquifer conditions, aquifer demands, and local impacts may differ widely.

Using different strategies (assumptions) for the different pumping files for different districts is what the law commands, to be respectful of districts as the *local* groundwater management entities. Nothing about participating in a GMA is intended to undermine the autonomy of each district.

² At the June 24th meeting. <https://posgcd.org/wp-content/uploads/2021/06/ES-SAWDF-Comments-to-GMA-12-23June21-FINAL.pdf>.

³ EAA v Day, p 30. While districts have broad statutory authority,¹⁰⁹ their activities remain under the local electorate's supervision.¹¹⁰ Groundwater conservation districts have little supervision beyond the local level. Districts are also required to participate in joint planning within designated groundwater management areas ("GMAs").¹¹³

Certainly, this includes the ability for all of the districts to balance pumping against conservation while retaining their ability to curtail (slow down pumping) when damage is imminent. Instead, the GMA districts voted to have each district's DFCs conform to a single pumping file, S-12.

The standards for developing desired future conditions in this round of review resulted in the representatives from four of the districts imposing their will on this district, Post Oak Savannah GCD, rather than reaching a workable and agreeable resolution that works for all of the districts.

In doing so, the districts *inappropriately* forced their will on Post Oak Savannah GCD,⁴ and essentially eliminated Post Oak's ability to curtail the Vista Ridge project even though, after only about six months of pumping, dozens of landowners' domestic wells in Burleson and Lee Counties are being continuously damaged, having already incurred thousands of dollars to repair, with predictions of unquantified future damages .

Worse, the damage to the aquifers in these counties will continue for many decades unless the Proposed DFCs are rejected and revised.

Our over-arching concern is that unresolved management policies developed rapidly over the last nine months and resulted in the districts *inappropriately* imposing requirements on another district. These flawed policies, instigated at the GMA-12 joint-planning level, are embedded in the Proposed DFCs and will have serious immediate and future consequences on management policies within the individual districts. Most urgently, the impact of changes in management policies that have a direct negative impact on the ability of districts to manage curtailment of pumping need to be resolved, and agreed policies adopted by the districts, before future DFCs are adopted.

We respectfully request that this Board reject the proposed desired future conditions and remand them back to the GMA-12 representatives for revision.

⁴ "inappropriately" -- it was not the district representatives place to force management policies on Post Oak, and fear of litigation is never an appropriate reason for adopting any management policy, establishing DFC, or generally, for conducting the business of a GCD.