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November 10, 2020

VIA EMAIL

Mr. Gary Westbrook
General Manager
Post Oak Savannah Groundwater Conservation District
310 E. Avenue C
Milano, Texas 76556
gwestbrook@posgcd.org

Re: Blue Water Vista Ridge – Desired Future Conditions

Dear Mr. Westbrook:

Blue Water Vista Ridge LLC (“Blue Water”) is keenly interested in the accuracy and transparency of the model inputs for the current Desired Future Conditions (“DFC”)/Modeled Available Groundwater (“MAG”) planning cycle for the Post Oak Savannah Groundwater Conservation District (“District”) and GMA 12. Blue Water submits these comments to ensure the accuracy and transparency of model inputs used by the District and GMA 12.

As an initial matter, there are several baseline facts that must be taken into account in connection with DFC/MAG planning cycle. The Vista Ridge Project relies on 9 Carrizo and 9 Simsboro wells to produce groundwater sufficient to meet the needs of the 142 mile Vista Ridge pipeline project serving the City of San Antonio. After extensive hearings and public process (in multiple permit applications over many years), the District approved operating and transport permits for Carrizo production in the amount of 15,000 acre-feet per year and Simsboro production in the amount of 40,835 acre-feet per year. Blue Water has paid millions of dollars in fees to the District in amounts that are specifically tied to the District’s permitted production from the Carrizo and Simsboro aquifers. Nine Carrizo wells for the Vista Ridge project have been drilled—at very substantial expense—and those Carrizo wells commenced production for the Vista Ridge Project on April 15, 2020.

Blue Water recently learned that the District is apparently supporting an effort to use inaccurate Carrizo aquifer model inputs in connection with the DFC/MAG planning cycle for the District and GMA 12. In particular, Blue Water has learned that: (a) the District has reviewed the output of GMA 12 Simulation S7, which predicts Carrizo drawdown within the District of 176 feet over the current planning horizon (2010-2070) based on the accurate input of 15,000 acre-feet of production for Vista Ridge; (b) the District’s DFC Committee apparently finds that level of drawdown unacceptable; and (c) the District intends to inaccurately reduce the *known* 15,000 acre-

feet Vista Ridge Carrizo pumpage to *artificially* produce lower simulated Carrizo drawdowns and a resulting lower DFC for Carrizo pumpage within the District. Blue Water is very concerned about any such effort to use inaccurate model inputs, especially when such a decision appears motivated by a desire to manipulate the results, rather than accurately model the results using known, accurate model inputs.

Accurate model predictions require accurate model inputs. That is especially true with respect to future groundwater production from a known, permitted groundwater project with wells and infrastructure that have been built (at the cost of hundreds of millions of dollars) and which is in production—as is the case with the Vista Ridge Project. Unlike many other groundwater permittees in the region, Vista Ridge Carrizo production is permitted, known, in production and will be very consistent and predictable for the next six decades (which is the minimum timeframe covered by the 30 year contracts with San Antonio Water System). Thus, the District’s apparent decision to reduce the amount of Carrizo production in Simulation S7 is contrary to the District’s actual knowledge of the Vista Ridge project, will materially diminish the accuracy of its predictions and, subsequently, the validity and usefulness of the DFCs and MAGs derived from it. As you know, the amount and distribution of drawdown due to Vista Ridge pumpage has been acknowledged and approved by POSGCD for more than a decade. During permitting of Blue Water’s Carrizo production in 2008, the results of multiple GAM simulations were reviewed and accepted by POSGCD staff, hydrogeologic consultants, and board members. Current POSGCD monitoring data demonstrate that real-world aquifer response to Vista Ridge pumpage is consistent with the model results reviewed by the district.

In addition to artificially reducing known, permitted Vista Ridge production from the Carrizo aquifer, the District’s apparent decision to wait until the tail end of the regional planning process raises additional concerns about the transparency of the District’s participation in the GMA 12 planning process. The District’s public advocacy to the GMA 12 committee meeting on October 22 that no further GMA 12 meetings take place through the end of the year means that there will be little or no time for corrective action for inputs that are known to be inaccurate.

Based on the foregoing, please let this correspondence serve as formal notice to the District and GMA 12 that accurate and transparent model inputs must be used for regional water planning. Establishing the DFC limits by artificial manipulation of known, predictable pumping violates Texas Water Code Chapter 36. Groundwater districts are tasked with developing their rules based on the use of the “best available science,” defined as “conclusions that are logically and reasonably derived using statistical or quantitative *data*, techniques, analysis, and studies that are *publicly available* to reviewing scientists and can be employed to address a specific scientific question.” TWC 36.015(a)-(b). Similarly, groundwater districts are required in the course of developing their management plans and amendments to those plans to use “the district’s *best available data*” and are tasked with forwarding “that *data* to the regional water planning group for use in their planning process.” TWC 36.1071(b).

The artificial reduction of known pumping also violates several other Chapter 36 criteria and raises serious constitutional concerns:

- DFCs must balance “the highest practicable level of groundwater production” with conservation goals. TWC 36.108(d-2).
- In adopting DFCs, groundwater districts are required to consider the water supply needs and water management strategies included in the state water plan. TWC 36.108(d)(2). The Vista Ridge project is included in the state water plan and represents an important source of potable water for a major metropolitan area, and it is thus unacceptable for the District and GMA-12 to adopt DFCs that do not account for the impacts associated with an established, large-scale public supply water system such as Vista Ridge.
- Groundwater districts are also required to consider the feasibility of achieving a DFC. TWC 36.108(d)(8). Because Vista Ridge production rates and volumes represent known quantities that can be relied upon for the foreseeable future, DFCs that do not incorporate impacts associated with Vista Ridge cannot be achieved and therefore fail to meet the TWC Section 36.108(d)(8) requirement.
- The Texas and U.S. Constitutions both protect private property rights, including property rights in groundwater, from unlawful takings. Blue Water has invested millions of dollars in reliance on its constitutionally-protected private property rights in groundwater. It is essential that those vested property rights be protected from unlawful takings and that the District not take action to confiscate those property rights.

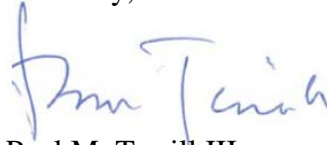
Blue Water will take all necessary actions at the District level, with GMA 12 and its members, with the Texas Water Development Board, the courts and the state legislature to ensure that the District complies with its statutory and constitutional obligations with regard to establishing the next DFC for the Carrizo aquifer. To that end, it is essential that the 15,000 acre-foot of known, permitted Carrizo aquifer production for the Vista Ridge Project be included in the model input in this DFC/MAG planning cycle to comply with the legal requirements of Chapter 36.

Finally, as we recently commented in connection with the District’s recent rulemaking activity, Blue Water remains concerned regarding the apparent shift from the District’s longstanding practice of providing public notice of both Rules Committee and DFC Committee meetings and inviting public and stakeholder participation in these meetings. Blue Water routinely availed itself of the opportunity to attend and participate in these meetings. Yet, while the District continues to say it is concerned with transparency and public participation, for the past several months we continue to learn after the fact that these committees have met and decided major District policy issues without public notice and input. The apparent plan to reduce known Carrizo

Mr. Westbrook
November 10, 2020
Page 4

pumpage in developing the DFC is further evidence of a lack of transparency. We continue to urge the District to return to its prior transparent model of governance and regulation.

Sincerely,



Paul M. Terrill III
TERRILL & WALDROP

cc: Ross Cummings, Blue Water Vista Ridge, LLC
James Bene, R. W. Harden & Associates, Inc.
Barbara Boulware-Ware, POSGCD General Counsel