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August 10, 2021

VIA EMAIL

Mr. Alan M. Day – Brazos Valley GCD
Mr. David Van Dressar – Fayette County GCD
Mr. Jim Totten – Lost Pines GCD
Mr. David Bailey – Mid-East Texas GCD
Mr. Gary Westbrook – Post Oak Savannah GCD

Re: Blue Water Vista Ridge – Response to Post Oak Savannah GCD July 14, 2021
Position Paper on Desired Future Conditions

Dear Groundwater Management Area No. 12 Representatives:

Blue Water Vista Ridge LLC (“Blue Water”), permit administrator for the Vista Ridge Project, is in receipt of the July 14, 2021 Post Oak Savannah Groundwater Conservation District (“POSGCD” or “District”) “Position Paper” in which POSGCD offers opinions regarding the processes used during development of Desired Future Conditions (“DFCs”) by the member groundwater conservation districts of Groundwater Management Area No. 12 (“GMA-12”). POSGCD’s Position Paper is the District’s latest effort—at least the fifth time in the past several months—to promote adoption of a DFC for the Carrizo aquifer that would ignore ongoing and exceptionally-predictable *POSGCD-permitted* pumpage from existing Vista Ridge Project wells.

The following facts are essential to the consideration of adopting a legally-defensible DFC and are *not in dispute*:

- (i) The 15,000 acre-feet of annual production from the Carrizo Aquifer was approved by POSGCD in 2008.
- (ii) The 15,000 acre-feet of permitted annual production and associated drawdown from the Carrizo Aquifer was known by the District during every DFC planning cycle.
- (iii) POSGCD has collected approximately \$5.7 million in fees for the 15,000 acre-ft/year of Carrizo production since it was permitted to Blue Water Systems in 2008.
- (iv) In 2012, the Vista Ridge Project was approved and adopted into the State Water Plan as a Water Management Strategy to provide groundwater to San Antonio Water System (“SAWS”).

- (v) In November 2014, SAWS entered into a publicly-available and well-known 30-year contract for the purchase of 50,000 acre-feet per year from the Vista Ridge Project, which contract specifically included the 15,000 acre-feet of Carrizo production authorized by POSGCD.
- (vi) Beginning in 2017, nine Carrizo Aquifer wells were drilled and completed at substantial expense for use as part of the Vista Ridge Project in reliance on the permits issued by POSGCD.
- (vii) On April 15, 2020, the nine Carrizo Aquifer wells for the Vista Ridge Project commenced commercial operations and have been in operation since that time.

Table 8-1 of the POSGCD Management Plan lists Modeled Available Groundwater (“MAG”) values for the Carrizo aquifer ranging from 4,025 ac-ft/yr in 2010 to 7,059 ac-ft/yr in 2060. The MAG values represent the amount of Carrizo pumpage input into the Groundwater Availability Model (“GAM”) simulation used to define the currently-adopted DFCs. Blue Water’s inspection of the regional distribution of GAM pumpage indicates that the Carrizo pumpage used to derive the DFCs adopted during both the first (2010) and second (2016) rounds of DFC joint planning included *none* of the 15,000 acre-ft/year Vista Ridge Project Carrizo pumpage that was permitted by POSGCD in 2008. Because the GAM excluded *all* of the 15,000 acre-feet/year for the Vista Ridge Project, the currently-adopted Carrizo DFC drawdown limit is set to an unrealistically low value that does not reflect current, actual production from the nine Vista Ridge Project Carrizo wells—and is therefore both unreasonable and unachievable. It is worth noting that, while POSGCD has repeatedly declined to include Vista Ridge Project Carrizo pumpage in DFCs since the beginning of DFC/MAG joint planning in 2010, it has collected Carrizo permit fees totaling approximately \$5.7 million.

During previous DFC planning cycles, POSGCD attempted to justify the exclusion of Blue Water’s Carrizo pumpage because of implied doubts as to whether the POSGCD-permitted pumpage would come to fruition. Given that the nine permitted Vista Ridge Project Carrizo wells were completed in 2018, began full production in 2020, and will continue to produce groundwater throughout the 40-year permit term (and likely beyond), any such doubts upon which POSGCD formerly relied have been resolved. It is no longer reasonable to omit the 15,000 acre-ft/year of Carrizo Aquifer permitted pumpage from the current DFC joint planning process. Substantial investment was made in those nine Carrizo Aquifer production wells and the \$3 billion Vista Ridge Project relies on production from those wells.

POSGCD’s neighboring districts in GMA-12 have properly recognized that known, ongoing pumpage must be accounted for in the DFC. Thus, the neighboring GMA-12 districts have correctly rejected POSGCD’s attempts to artificially exclude Vista Ridge Carrizo pumpage from the current DFC simulation. POSGCD has accused the other member districts

of GMA-12 of wrongly considering “known pumpage” which the District characterizes as not being one of the statutory factors that must be considered in establishing a DFC. POSGCD further argues that, because “known pumpage” is not a previously-employed, clearly-defined term, it should not be used by their neighboring districts as a reason for rejecting POSGCD’s proposed model inputs. POSGCD’s argument fails to address the other GMA-12 districts’ rational insistence that the regional water planning process be based on accurate projections of future aquifer conditions.

On page 5 of their position paper, POSGCD suggests that inclusion of known, existing permitted pumping in the GAM DFC simulation inputs will result in subsequent real-world impacts that will require the modification or replacement of 140 Carrizo wells. What POSGCD fails to address is that the amount and distribution of drawdown due to the 15,000 acre-ft/year of Carrizo pumpage was approved by POSGCD in 2008 and the results of that production were predictable and well-known—both then and now. During permitting of the 15,000 acre-feet of 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 and approved by the District. POSGCD’s complaint that using accurate pumpage inputs for DFC planning results in intolerably-large, unforeseen future impacts is not consistent with the District’s review and approval of the 15,000 acre-ft/year of Carrizo production.

POSGCD’s argument would have the other member districts ignore the statutory requirements governing districts both in general and in the specific context of the regional planning process. Section 36.0015 of the Texas Water Code requires groundwater conservation districts to use the “best available science,” which means formulating rules and policies that are based on conclusions that are logically and reasonably derived using statistical or quantitative data. Similarly, Texas Water Code Section 36.108(d)(2) requires that groundwater conservation districts “*shall consider the water supply needs and water management strategies included in the current state water plan*” before adopting DFCs. The Vista Ridge Project was included in the 2017 state water plan as a Recommended Project related to a Water Management Strategy for the San Antonio Water System and represents an important source of potable water for the seventh largest city in the United States.

Finally, Texas Water Code Section 36.108(d)(8) requires that districts consider “the feasibility of achieving the desired future condition.” Blue Water submits that disregard of POSGCD-approved and known permitted pumping would render any artificially-suppressed DFC for the Carrizo impossible to obtain. While Blue Water recognizes that the statutory factors must each be considered and balanced in establishing the DFC, POSGCD’s attempt to manipulate the best available science by intentionally disregarding known, predictable, permitted pumping would violate the District’s statutory obligations to use best available

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science, consider regional water supply needs, and adopt DFCs that are feasible. GMA-12 should continue to reject POSGCD's efforts to exclude the 15,000 acre-ft/year of known Carrizo Aquifer production that POSGCD permitted in 2008.

Sincerely,



Paul M. Terrill III
TERRILL & WALDROP

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