

PETITION FOR INQUIRY

CERTIFIED STATEMENT DESCRIBING WHY I BELIEVE THAT AN INQUIRY BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY IS NECESSARY

[Submitted in fulfillment of Texas Administrative Code Rule 293.23 (d)]

I am filing this *Petition for Inquiry* (Texas Water Code Section 36.3011) for the following reason:

"The groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules."

This *Petition for Inquiry* may be unique in that the Post Oak Savannah Groundwater Conservation District (*the District*) itself violated its own Rules; the specific transgressors being the Board of Directors and general manager.

Although I along with others have alerted the District about the need to follow the Rules that are the focus of the *Petition for Inquiry*, our efforts have been met with silence. Citizens have no recourse to require the District to stop violating its own Rules other than filing a *Petition for Inquiry* with the Texas Commission on Environmental Quality or pursuing costly legal remedies.

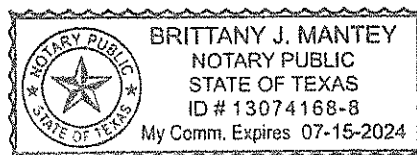
In this *Petition for Inquiry*, I present evidence that the District has failed to enforce substantial compliance with the Rules they adopted to ensure the achievement of the Desired Future Conditions (DFCs). Desired Future Conditions are defined as quantitative descriptions of the desired condition of the groundwater resources in a management area at one or more specified future times.

To help achieve the DFCs, the District established three threshold levels: Level 1, Level 2, and Level 3. In addition, the District established Rules that both define when a Threshold Level is reached and list the Actions required to be taken after each Threshold Level is reached.

Threshold Levels have been breached for five Aquifers within the District's boundaries for more than two years. But the District has failed to initiate Actions required by the District's Rules.

This *Petition for Inquiry* allows me to explain to the Texas Commission on Environmental Quality why I think an investigation of the District is needed to protect our Aquifers in Groundwater Management Area 12.

Curtis Chubb, Ph.D.
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SWORN AND SUBSCRIBED TO ME
ON 9 MARCH 2022
BY
CURTIS CHUBB
(Curtis Chubb)

X Brittany J. Manthey
Notary Public

**PETITION FOR INQUIRY OF
POST OAK SAVANNAH GROUNDWATER DISTRICT (THE DISTRICT)
SUBMITTED TO THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (THE COMMISSION)
BY DR. CURTIS CHUBB OF MILAM COUNTY, TEXAS**

Fulfillment of basic requirements to request this Commission inquiry:

Affected person status:

According to Texas Water Code Section 36.3011(a) (1) and Texas Administrative Code 292.23 (a) (1), I qualify for “affected person” status for requesting this inquiry of the District’s duties because I own land in Groundwater Management Area 12 (GMA 12):

I own about 90 acres of land in southern Milam County.

Reason for requesting this inquiry:

I am requesting this inquiry for the following reason listed in Texas Water Code Section 36.3011(b) (9) and Texas Administrative Code 292.23 (b) (9):

The groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

Contact information:

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CHIEF CLERK'S OFFICE
MARCH 9 2022
ON BEHALF OF THE
COMMISSIONER

Petition for Inquiry:

In this Petition, I present documented evidence that the District has failed to enforce substantial compliance with its Rules adopted to ensure the achievement of the Desired Future Conditions (DFCs). Desired Future Conditions are defined as quantitative descriptions of the desired condition of the groundwater resources in a management area at one or more specified future times.¹ DFCs should not be exceeded.² The District uses average water levels of monitoring wells as DFCs.

This *Petition for Inquiry* may be unique in that the District itself violated its own Rules; the specific transgressors being the Board of Directors and general manager. Incredulously, the District's general manager is on a video explaining how and why he violated the Rules: the transcribed discussion is presented as evidence of District's failure to enforce substantial compliance with its Rules specifically designed to protect groundwater in GMA 12.

Please note that District Rule 16.3 is important for this Petition because it states: "Once a threshold level (defined in Section 1) has been reached, the corresponding actions in Rules 16.4 and 16.6 will be taken irrespective of any subsequent change to the DFCs for that aquifer or Management Zone."³ This *Petition for Inquiry* would not have been filed without this requirement because the District violated its own Rules based on current DFCs – and Rule 16.3 prevents the District from claiming that their adoption of new DFCs cures the problem.

I pray the Commission to investigate the District because of the District leadership's disregard for the District's Rules designed to protect the groundwater. No one is above the District's Rules including the Directors and their employees.

ORGANIZATION OF THIS PETITION FOR INQUIRY

SECTION 1: Discussion of basic terms used in this Petition (p. 3)

SECTION 2: How we got here (p. 4)

SECTION 3: **Specific Rules violated by the District** (p. 8)

SECTION 4: Exhibits (p. 16)

¹ Texas Water Code 36.001 (30)

² Desired Future Condition Explanatory Report for Groundwater Management Area 12 – 20 September 2017 at <https://www.twdb.texas.gov/groundwater/dfc/2016jointplanning.asp>

³ District Rule 16.3 – Exhibit 1

SECTION 1

(Discussion of basic terms used in this Petition)

Threshold Levels:

To help achieve DFCs, the District established three threshold levels: Threshold Level 1, Threshold Level 2, and Threshold Level 3. A description of how each threshold level is reached is presented in **District Rule 16.4** and summarized in Table 1.⁴

Triggers	Threshold Level 1	Threshold Level 2	Threshold Level 3
Projected Drawdown	Greater than DFC in 15 years		
Total Annual Production Compared to MAG	Greater than 60%	Greater than 70%	
Average Drawdown of Water Levels Compared to DFC	Greater than 50%	Greater than 60%	Greater than 75%

Table 1: Threshold Levels Summary

This Petition focuses on Threshold Levels 1 and 2 and the trigger “Total Annual Production Compared to MAG”:

- “Total Annual Production” is the sum of well production amounts reported annually by the District’s well owners.⁵
- “MAG” is discussed in the next paragraph.

MAG = Modeled Available Groundwater:

MAG, the acronym for Modeled Available Groundwater, is defined as the amount of groundwater that may be produced on an average annual basis to achieve a DFC as determined by the executive director of the Texas Water Development Board (TWDB).⁶

The MAG for each aquifer in the District is presented in ***Exhibit 2***. (Note: Be aware that the District’s Management Plan does not contain an updated list of MAGs.)

⁴ District Rule 16.4 – Exhibit 1

⁵ District Rule 7.15 (7) at <https://posgcd.org/wp-content/uploads/2021/08/Adopted-Rules.07-13-2021.pdf>

⁶ Texas Water Code 36.001 (25); Texas Water Code 36.1084 – both at <https://statutes.capitol.texas.gov/Docs/WA/htm/WA.36.htm>

SECTION 2

(How we got here)

The District Treats MAGs as Irrelevant Numbers:

One of the multitudes of problems with the District is that they treat MAGs as irrelevant numbers. The degree to which the District disregards MAGs can be understood by the multiple times that the District has not adhered to **Texas Water Code 36.1132** – a State water law based on the MAG as evidenced by its title: “*Permits based on Modeled Available Groundwater”⁷.*

A close reading of Texas Water Code 36.1132 allows one to understand that its sole purpose is to assist groundwater districts achieve the DFCs by requiring the MAGs to be considered. The requirement to consider the MAGs when issuing pumping permits is logical since MAGs are defined as the amounts of groundwater that can be pumped annually to achieve the DFCs as discussed above. The entirety of Texas Water Code 36.1132 is presented here:

36:1132 - PERMITS BASED ON MODELED AVAILABLE GROUNDWATER (MAG)

- (a) A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.*
- (b) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:*
 - (1) the **modeled available groundwater** [MAG] determined by the [TWDB] executive administrator;*
 - (2) the executive administrator's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;*
 - (3) the amount of groundwater authorized under permits previously issued by the district;*
 - (4) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and*
 - (5) yearly precipitation and production patterns.*
- (c) In developing the estimate of exempt use under Subsection (b)(2), the executive administrator shall solicit information from each applicable district.*

⁷ Texas Water Code 36.1132 at <https://statutes.capitol.texas.gov/Docs/WA/htm/WA.36.htm>

The Carrizo and Simsboro have Breached Threshold Levels 1 and 2:

The District's non-adherence to Texas Water Code 36.1132 and the District's treatment of MAGs as irrelevant numbers have caused the Carrizo and Simsboro Aquifers to breach Threshold Levels 1 and 2 although the aquifers' DFCs are scheduled to be achieved **FIFTY YEARS from now**. As a result, the District has imperiled the achievement of the Carrizo and Simsboro DFCs – critical guardrails for protecting the Carrizo and Simsboro Aquifers.

The data presented in *Figures 1 and 2* document that the Carrizo and Simsboro have breached the important safeguard Threshold Level 2 designed to protect our aquifers.

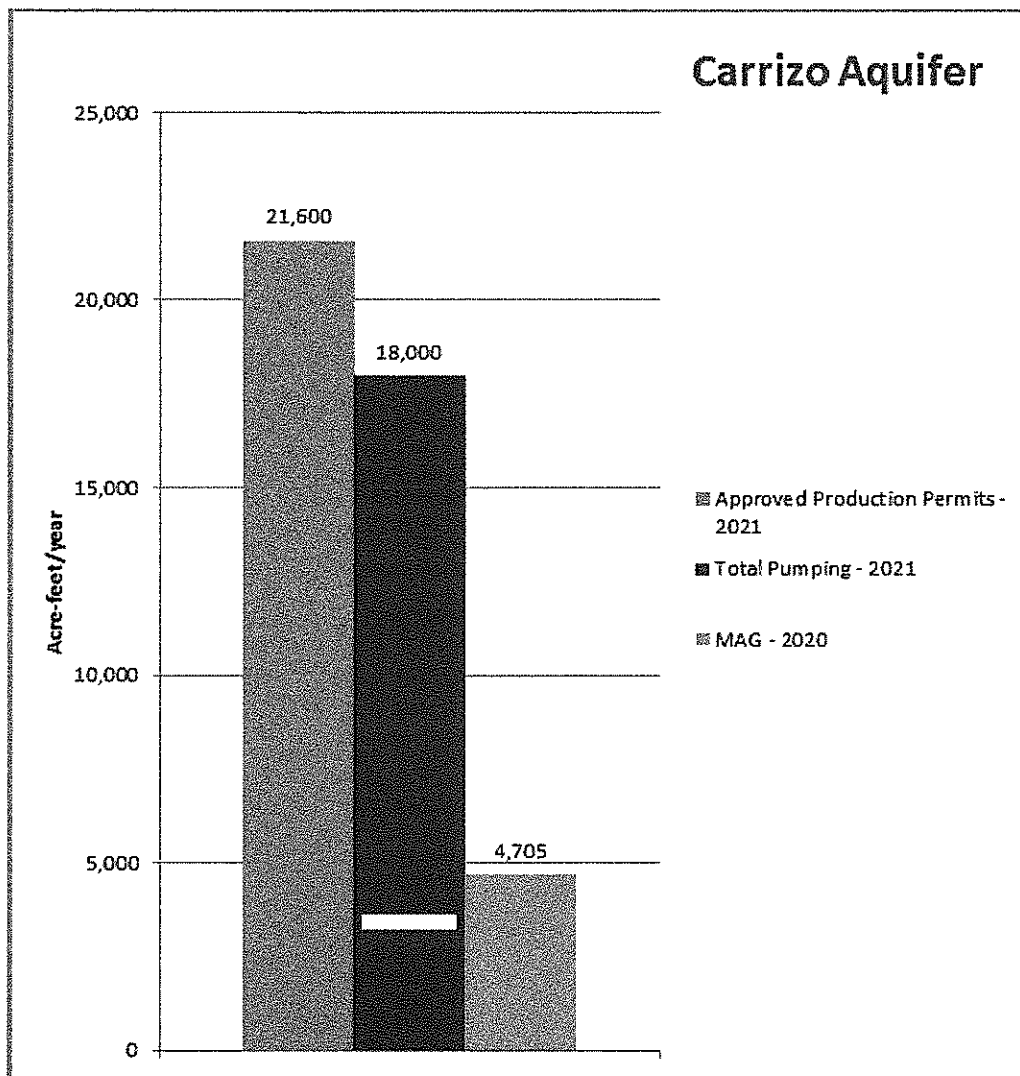


Figure 1: The District's Approved Production/Pumping Permits and Total Pumping for the Carrizo Aquifer as Compared to the Carrizo MAG. The yellow bar = Threshold Level 2.

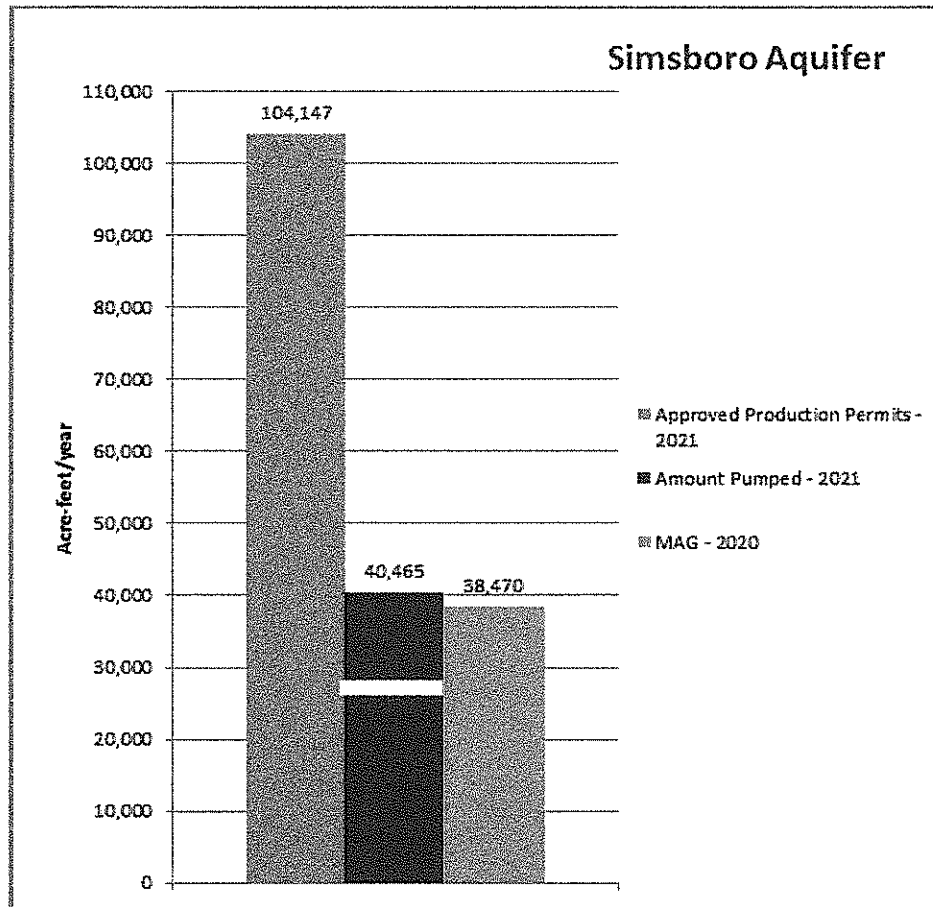


Figure 2: The District's Approved Production/Pumping Permits and Total Pumping for the Simsboro Aquifer as Compared to the Simsboro MAG. *NOTE: The "Amount Pumped" within two years will increase to at least 65,465 acre-feet/year when Alcoa begins transporting 25,000 acre-feet/year of Simsboro to Williamson County. The yellow bar = Threshold Level 2.*

The data presented in Figures 1 and 2 support the following conclusions:

- Both the Carrizo and Simsboro Aquifers have breached Threshold Level 2 as marked by the 'yellow bar'. (See Table 1 for Threshold Level 2 definition).
- The District's lack of adherence to Texas Water Code 36.1132 guidelines is the root cause for the **approved production/pumping permits exceeding 460% of the Carrizo MAG and 270% of the Simsboro MAG**. If the District had obeyed Texas Water Code 36.1132, the production/pumping permits would have approximated the MAGs and the resulting 'amount pumped' would not have breached either Threshold Levels 1 or 2.
- The District's treatment of MAGs as irrelevant numbers is highlighted by the Carrizo's **"amount pumped" exceeding the Carrizo MAG by a stunning 283%** (See Figure 1).

And the Carrizo and Simsboro Continue Their Steep Water Level Decline with the Carrizo nearing Threshold Level 3:

The breaching of Threshold Levels is the red flag warning that DFCs will be exceeded if corrective action is not taken. That is why it is critical that the District strictly obey their Rules concerning actions to be taken after the breach of Threshold Levels (*discussed in Section 3*).

My study of the District's monitoring wells revealed significant water level drawdowns for the Carrizo and Simsboro commencing when the Vista Ridge Project started transporting 51,000 acre-feet/year of Carrizo and Simsboro to San Antonio in April 2020. For example, **Figure 3** is silent testimony that the extreme overpumping caused an unacceptable number of Carrizo wells to go dry during a short two-year time period (early 2020 to early 2022). The Carrizo water level drawdowns have averaged 65 feet over the entire 677 square miles of the District's Burleson County division; to comprehend the magnitude of this drop, consider that a utility pole is 40 feet in height. The water level declines ranged from a startling 421 feet at the Vista Ridge well field to 127 feet (4 miles north of the well field) to 14 feet (13 miles north of the well field).

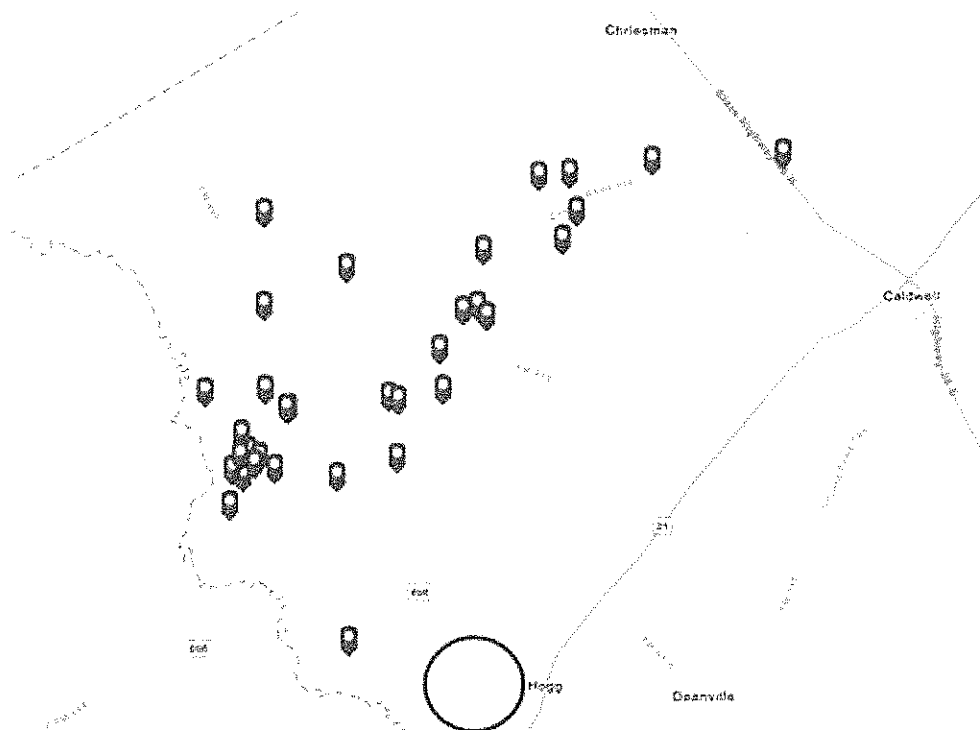


Figure 3: Blue markers identify the 34 Carrizo Aquifer wells in Burleson County that had to be repaired by the District as of 28 March 2021 – eleven months after the Vista Ridge Project started full operations. The circle at the bottom of the map marks the location of the Vista Ridge well field consisting of 9 Carrizo and 9 Simsboro high-capacity wells. **Please note** that the District's 2021 Annual Report stated that as of December 2021, the total number of Carrizo wells needing repair had increased to 60 - about twice the number of wells depicted in Figure 3 – at a total cost to the District of \$381,413.

SECTION 3

(Specific Rules violated by the District)

We Petitioned the District on 5 November 2020 to Declare that the Carrizo and Simsboro had Exceeded Threshold Levels 1 and 2:

When the Central Texas Aquifers Coalition (*a group of Milam County citizens*) realized that excessive Carrizo and Simsboro pumping by the Vista Ridge Project had caused Threshold Levels 1 and 2 to be breached BUT the District had not notified well owners as required by their Rules, we sent the following petition to the District's Board of Directors to ask them to declare that the Carrizo and Simsboro had breached Threshold Levels 1 and 2:



The Post Oak Board Is Petitioned to Declare That the Simsboro and Carrizo Have Exceeded Threshold Levels 1 and 2

5 November 2020

Threshold Levels 1 and 2 for the Simsboro and Carrizo have been exceeded due to their 'Total Estimated Annual Production' exceeding 70% of their MAG; MAG is the amount of available groundwater for an aquifer as determined by the State of Texas. *(See following Table adapted from Post Oak Rule 16.4, and The Supporting Data.)*

Project	Threshold Level 1	Threshold Level 2	Threshold Level 3
Projected Drawdown	Greater than DFC in 15 years		
Total Annual Production Compared to MAG	Greater than 60%	Greater than 70%	

THE SUPPORTING DATA

Vista Ridge pumping alone exceeds Threshold Levels 1 and 2 for Simsboro and Carrizo:

Vista Ridge Annual Production for the **Simsboro** = 35,000 ac-ft/year
 2020 MAG for Simsboro = 38,468 ac-ft/year
 70% of 2020 MAG for Simsboro = 26,927 ac-ft/year (*reached in 9 months*)

Vista Ridge Annual Production for the **Carrizo** = 15,000 ac-ft/year
 2020 MAG for Carrizo = 4,706 ac-ft/year
 70% of 2020 MAG for Carrizo = 3,294 ac-ft/year (*reached in 2.5 months*)

If the Post Oak Board has already notified the public that Threshold Levels 1 and 2 for the Simsboro and Carrizo have been exceeded, please share the public notice used to alert the landowners of Milam County that the Post Oak Board has permitted these aquifers to a level that is not sustainable.

If no action has been taken, it is time for the Post Oak Board to stand-up for our aquifers and declare Threshold Levels 1 and 2 have been exceeded for the Simsboro and Carrizo.

The District's Board of Directors has never responded to either our petition or follow-up report titled our "Groundwater Crisis" sent to them on 2 May 2021 about the Threshold Levels breach - just the customary silence from Directors appointed to represent the citizens. More importantly, the District has continued to violate District Rule 16.4 during the 17 months since our petition was sent to them (discussed below).

Three Other Aquifers Have Also Breached the Threshold Levels:

Interestingly, while preparing this *Petition for Inquiry* I discovered that the Calvert Bluff, Sparta, and Queen City Aquifers have also breached the Threshold Levels (See Figure 4). As in the case of the Carrizo and Simsboro, the District continues its violation of District Rule 16.4 for these three aquifers to the present day.

Section 16.4 Threshold Exceedances

Threshold	Description	Aquifer(s)
Level 1	> 50% of DFCs	Sparta (28 ft)
Level 1	> PDLs in 15 years	Carrizo (20 ft), Calvert Bluff (20 ft), Simsboro (20 ft)
Level 1	> 60% of MAG	Simsboro (58,468 AFY)
Level 2	> 70% of MAG	Queen City (468 AFY), Carrizo(4,706 AFY)

Note 1: Modeled Available Groundwater(MAG) is for 2020
Desired Future Conditions (DFC) is for 2070
Protective Drawdown Limit (PDL) is for 2070

Note 2: Green colored aquifers indicates exceedance anticipated
before December 31, 2020

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Figure 4: Slide presented by the Intera hydrologist at the 4 December 2020 DFC Committee Meeting listing Aquifers which had exceeded Threshold Levels.⁸

How the District Has Failed to Enforce Substantial Compliance with its Rules Focused on Achieving the DFCs:

Please note that for the remainder of this *Petition for Inquiry*, I will focus on the Carrizo Aquifer since it was the main topic of discussion at the District DFC Committee meetings I reviewed.

However, it should be remembered that the District has failed to “enforce substantial compliance with its Rules” for all FIVE aquifers that have breached Threshold Levels namely the Calvert Bluff, Carrizo, Queen City, Simsboro, and Sparta (See Figure 4).

⁸ District Hydrologist Steve Young – DFC Committee Meeting 10 December 2020 – Time Mark 38:40 in a video accessible at <https://vimeo.com/488185282>

Who is Responsible for Enforcing the District's Rules?

District Rule 2.1 states that the Board of Directors is responsible for the enforcement of the District Rules.⁹

LIST OF ACTIONS required by District Rules 16.3 and 16.4:

District Rules 16.3 and 16.4 focus on the Threshold Levels that were adopted by the District to achieve the DFCs. The two Rules require the following **LIST OF ACTIONS** to be fulfilled when Threshold Levels 1 and 2 are breached:¹⁰

1. Threshold Level 1 Actions and Time to Initiate Actions:

- a. Additional studies will be undertaken to evaluate the nature and extent of curtailment in groundwater production that may be required to achieve the District's management objectives inclusive of achieving the DFCs and PDLs. *(Note: **PDLs** is the acronym for Protective Drawdown Limits – they are in effect a District-customized drawdown level used to protect shallow parts of the aquifers.)*
- b. The studies will, at a minimum, suggest possible schedules for reducing groundwater production in the affected management zone(s).
- c. The District will perform studies to provide information on aquifer properties, aquifer recharge, aquifer and surface water interactions, and aquifer pumping. To the extent possible, the studies shall distinguish between the causes and effects of pumping occurring within the District and outside the District. The results may be used to improve the models, tools, and methodologies used to analyze data and predict future groundwater levels and availability.
- d. The District will contract with a professional hydrogeologist to (i) conduct studies and/or (ii) establish the parameters for the studies and review the results of the studies.
- e. The results of all the studies shall be made available to the public in a reasonable manner.

⁹ District Rule 2.1 at <https://posgcd.org/wp-content/uploads/2021/08/Adopted-Rules.07-13-2021.pdf>

¹⁰ District Rules 16.3 and 16.4 – Exhibit 1

- f. The District shall hold one or more public meetings and provide a minimum of 90 calendar days for the public to provide written comments in addition to the meeting(s).
- g. **Time to Initiate Action:** The Threshold Level 1 actions will be conducted at such time as the conditions that result in a breach of Threshold Level 1 for an aquifer are reached (*See Table 1 for a summary of the 'conditions'*).

2. Threshold Level 2 Actions and Time to Initiate Actions:

- a. A review of the Management Plan, rules, and regulations will be initiated.
- b. Pending the results of Threshold Level 1 studies, the District will notify well owners of possible plans for curtailing groundwater production.
- c. The District will re-evaluate the Management Plan and rules regarding management zones, recharge estimates, the collection and analysis of monitoring data, and proposed changes to DFCs for consideration in the joint planning process.
- d. As part of the re-evaluation, the District will hold one or more public meetings and provide a minimum of 90 calendar days for the public to provide written comments in addition to the meeting(s).
- e. **Time to Initiate Action:** The Threshold Level 2 actions will be conducted at such time as the conditions that result in a breach of Threshold Level 2 for an aquifer are reached. (*See Table 1 for a summary of the 'conditions'*)

When was Carrizo Threshold Level 2 Breached?

The District reported Carrizo Threshold Level 2 was breached in April 2020 – **two years ago**.¹¹

Which of the Above Actions Required by District Rule 16.4 has the District Initiated in Response to the Breach of Carrizo Threshold Levels 1 and 2?

To the best of my knowledge, the District has not initiated any Action spelled out in District Rule 16.4 for any of the five aquifers listed in Figure 4 – even though the breaching has been

¹¹ District Hydrologist Steve Young – DFC Committee Meeting 10 December 2020 – Time Mark 40:02 in a video accessible at <https://vimeo.com/488185282>

going on for years. There has definitely been no public announcement that the required Actions have been initiated.

And for certain, I can say the following District Rule 16.4 Actions have not been enforced since they include interaction with the public:

- ✓ Results of all Threshold Level 1 studies have not been made available to the public in a reasonable manner (*See Level 1 - e*). NOTE: The information in parentheses provides the location of the Action on the above LIST OF ACTIONS.
- ✓ None of the required public meetings have been held (*See Level 1- f and Level 2- d*).
- ✓ Well owners have not been notified (*See Level 2 - b*).
- ✓ There has not been a schedule for reducing groundwater production in the affected management zone(s) produced by the District (*See Level 1 - b*).

It is also important to note that **District Rule 16.4 requires the Actions to be conducted when the breach occurs** (*see Level 1 - g and Level 2- e on List of Actions*). It is also worthwhile to note that the Carrizo exceeded Threshold Level 2 almost TWO YEARS AGO – and the District has yet to comply with the actions dictated by their own Rule 16.4.

The District's failure to perform the above Actions provides substantial evidence that the District has violated its own Rules thereby failing "*to enforce substantial compliance with its rules*" – their inaction prevents our groundwater from being protected.

And the next subsection titled 'In Their Own Words' provides incontrovertible evidence of the District's failure to enforce substantial compliance with its Rules pertaining to Threshold Levels.

In Their Own Words – Why the District has not Notified Well Owners about the Carrizo Threshold Level 2 Breach as Required by District Rule 16.4:

While I was reviewing videos of the District's meetings in preparation for this *Petition for Inquiry*, I stumbled upon a discussion providing unquestionable proof of the District's failure to enforce substantial compliance with District Rule 16.4¹² The discussion focused on one Director's attempt to have the District follow its Rules to notify well owners about the Carrizo's water levels exceeding Threshold Level 2 – while the District's general manager actually blocked the Director's attempt to follow the District's Rules.

¹² DFC Committee Meeting 10 December 2020 – video accessible at <https://vimeo.com/488185282>

The discussion that I transcribed from the video was unsettling because of what it revealed about the District's culture – and it is all on video so the main actors cannot claim that my report of the discussion is either wrong or "taken out of context" (their favorite retort).

NOTE: The following discussion was transcribed from a video of the DFC Committee Meeting held on 10 December 2020 – the video can be accessed at <https://vimeo.com/488185282>.

- The discussion begins at Time Mark 39:58 – and ends at Time Mark 43:56.
- The discussion was prompted by the following slide which listed a few of the actions required in response to Threshold Levels being breached:

Rule 16.4. Actions Based on Monitoring Results	
Threshold 1	<ol style="list-style-type: none"> 1. Perform studies to improve quantification of pumping effects, characterization of aquifer, and prediction of changes in future water levels 2. Evaluate options for possible curtailment to achieve management goals
Threshold 2	<ol style="list-style-type: none"> 1. Evaluate the Management Plan and rules regarding management zones, collection and analysis of monitoring data, and DFCs. 2. May notify well owners of possible curtailment of groundwater production
Threshold 3	<ol style="list-style-type: none"> 1. Conduct public hearing to discuss aquifer conditions. Develop a Response Action Work Plan to achieve DFCs and PDLs. 2. May reduce the maximum water production permitted per acre for the Management Zone and the water authorized to be produced under any permit issued by the District for that zone

The discussion started when Director Wise asked if there are required timelines for notifying well owners (see second sentence under Threshold 2 in the above slide).

- Director Wise: "We have not formally notified anyone yet. Is that correct?"
- GM Westbrook: "Correct, we have not notified anyone yet."
- Director Wise: "Is there a timeline or time requirement? Is that 'may' mean that we *might* do it?"
- GM Westbrook: "Yes."
- Director Wise: "Should we do that or is it appropriate to at least notify the well owners that we are in Threshold 2 in those aquifers?"
- GM Westbrook: "So. To clarify if we did notify, we would be notifying 'permit holders' not well owners. Yes sir. When you have a public meeting like this,

that's one way of notifying. It's not formal but yes we could follow up with a formal notice to the Carrizo permit holders. The way that our Rules are set up, we might notify some of our historic users but it would be in a different format than we would notify anyone with a newer permit."

- Director Wise: "It's certainly a committee or board maybe decision but to me it seems if we're there then we ought to be transparent. This is a way to be transparent, I appreciate that... Maybe we ought to notify permit holders at this time. At least...we're going to follow our Rules and here is where we are."
- GM Westbrook: "Yes."
- Director Wise: "Does anybody have an opinion on that?"
- Director Roddam: "It doesn't say 'we shall' notify the well owners, it says 'we may' notify well owners. [NOTE: The Rule actually states: "will notify".] I say it's not a bad idea to extend the method of notification that we're currently doing based on these public meetings and/or I presume this information is being shared on our website as well."
- GM Westbrook: "Yes sir. All of our previous presentations that have been considered over the last seven months are posted on our website. Under today's meeting Steve has been given a summary of those meetings and you will be asked to discuss and make a determination on Carrizo DFCs. One of the reasons that we have proceeded in the way we have is that our current MAGs for the Carrizo which is the reason we are at Threshold 2 are based on a DFC that we are already familiar with the fact that we're not able to maintain that DFC. So in order not to start a process that will never proceed or progress, I thought it would be prudent to at least wait until our January meeting to issue that statement. By the January board meeting hopefully we will know what our new DFC on the Carrizo is and also maybe have an updated MAGS to deal with and maybe by board action necessitating an administrative change we may end up no longer being in Threshold 2. That's the reason I have not sent out any letters at this time."
- Director Wise: "Thank you."

MY REMARKS ABOUT THE ABOVE DISCUSSION:

- The Director is attempting to follow District Rule 16.4 – but the general manager in essence says that he won't notify the well owners and the

Director backs down. That is opposite from how a groundwater district is supposed to be operated – the general manager is the employee.

- But the part of the Discussion which supports my premise for this *Petition for Inquiry*, namely that the District is failing to “enforce substantial compliance with its rules”, is when the general manager states that he had made an apparently unilateral decision not to send the notifications to the well owners because he is expecting the DFCs and MAGs to change in January and that by some undefined board action “we may wind up no longer being in Threshold 2.” Plus, nothing is said about the other Aquifers that have breached Level 2.
- I will not say any more about the above discussion except:
 - This is not the way a groundwater district should operate – and some unbiased person should investigate what they are doing because the future of Milam County - my home – depends on affordable access to groundwater. That future is being jeopardized by an undisciplined, uninformed, and reckless groundwater district.
 - *The District is violating its own Rules in broad daylight - and the general manager blithely tells us that in his videotaped oration.*

CONCLUDING NOTE:

It all comes back to my basic premise for this entire *Petition for Inquiry*; the District is not above the District’s Rules – the Directors and their employees have to obey their own Rules. The District should be called out for violating this essential precept.

We need help.

SECTION 4

(Exhibits)

EXHIBIT 1

NOTE: The following Rules can be accessed at <https://posgcd.org/wp-content/uploads/2021/08/Adopted-Rules.07-13-2021.pdf>

RULE 16.3

RULE 16.3. MONITORING OF GROUNDWATER. The District will monitor estimated total annual production, water quality, and the water levels. An analysis of the monitoring data will be reported at least once every three years. If, within a Management Zone, the drawdown based on monitored groundwater levels, or total estimated annual production, or projected average water level drawdowns, reach a threshold established in Rule 16.4, then, as determined appropriate by the Board, the District will give notice to well permittees in the affected Management Zone(s) as provided in Rule 16.4. After giving notice, the Board will take appropriate action based on the analysis of measured water levels, projected average water level drawdowns, permitted production, current and projected total estimated annual production and relevant hydrogeologic and water resource information including, but not limited to surface water availability and drought conditions, and review and evaluate the current and predicted water availability. The District may reduce the maximum acre feet of water per acre of land for which the District may issue a permit and/or the volume of water authorized to be produced under any permit, as a result of the groundwater availability, total estimated annual production, and/or groundwater level drawdown within a Management Zone. The District may also adopt rule changes for a Management Zone if production in that Management Zone is shown to adversely impact groundwater conditions in

another Management Zone. Once a threshold level has been reached, the corresponding actions in Rules 16.4 and 16.6 will be taken irrespective of any subsequent change to the DFCs for that aquifer or Management Zone. [Amended July 12, 2005] [Amended June 12, 2012] [Amended May 3, 2017]

RULE 16.4

RULE 16.4. ACTIONS BASED ON MONITORING RESULTS. Monitoring and threshold levels will be used to initiate appropriate responses designed to help achieve the DFCs and PDLs, conserve and preserve groundwater availability and protect groundwater users. Three threshold levels are adopted to help guide these actions. Each threshold level provides for an increased level of response based on the change in production or water levels associated with a Management Zone. The threshold levels are: Level 1; Level 2; and Level 3. [Amended June 12, 2012] [Amended November 5, 2019]

1. Threshold Level 1. Threshold Level 1 will be reached, and additional studies will be undertaken to evaluate the nature and extent of curtailment in groundwater production that may be required to achieve the District's management objectives inclusive of achieving DFCs and PDLs. The studies will, at a minimum, suggest possible schedules for reducing groundwater production in the affected management zone(s). The Threshold Level 1 actions will be conducted at such time as: [Amended June 12, 2012] [Amended May 3, 2017] [Amended July 2, 2019]
 - a. Total estimated annual production is greater than 60% of the Modeled Available Groundwater (MAG) value listed in Section 8 of the Management Plan;
 - b. An average groundwater drawdown, calculated from monitored water levels for an aquifer, is greater than 50% of the average groundwater drawdown provided in Section 7 of the Management Plan as a DFC or PDL; [Amended November 5, 2019]
 - c. The average groundwater drawdown, calculated from monitored water levels, for a Shallow Management Zone is greater than 50% of the threshold value, for average drawdown in that Shallow Management Zone, listed in Section 7 of the Management Plan; or
 - d. Projected average water level drawdowns, calculated with a District approved methodology, indicate that a DFC or PDL listed in Section 7 of the Management Plan will be exceeded within 15 years.
2. Threshold Level 2. Threshold Level 2 will be reached, and a review of the Management Plan, rules and regulations will be initiated, and pending the results of Threshold Level 1 studies, the District will notify well owners of possible plans for curtailing groundwater production. The Threshold Level 2 actions will be conducted at such time as: [Amended June 12, 2012] [Amended May 3, 2017] [Amended July 2, 2019]
 - a. Total estimated annual production is greater than 70% of the Modeled Available Groundwater (MAG) value listed in Section 8 of the Management Plan; [Amended

July 2, 2019]

- b. Average groundwater drawdown, calculated from monitored water levels, for an aquifer is greater than 60% of the average groundwater drawdown listed in Section 7 of the Management Plan as the DFC for that aquifer; or
 - c. The average groundwater drawdown, calculated from monitored water levels, for a Shallow Management Zone, is greater than 60% of the threshold value for average drawdown listed in Section 7 of the Management Plan for that Shallow Management Zone;
3. Threshold Level 3. Threshold Level 3 will be reached, and the Board will consider and adopt amendments to the Management Plan, rules and regulations at such time as the average groundwater drawdown, calculated from monitored water levels, for an aquifer is greater than 75% of an average groundwater drawdown listed in Section 7 of the Management Plan as a DFC for that aquifer or PDL for the shallow portion of that aquifer. The District anticipates that one of the adopted amendments will include one or more strategies for the District's curtailment of groundwater production in the affected management zone(s) or adjacent zones causing the undesired effect. [Amended June 12, 2012] [Amended May 3, 2017] [Amended July 2, 2019] [Amended May 12, 2020]
4. The threshold levels will be administered and applied separately to each Management Zone. As part of the evaluations and determinations, the District will consider the pumping-induced impacts to groundwater resources that occur between or among management zones. The evaluation will determine if pumping or production in one management zone is contributing to adverse impacts to groundwater conditions in another management zone. [Amended June 12, 2012] [Amended May 3, 2017]
 - a. If Threshold Level 1 is exceeded, the District will perform studies to provide information on aquifer properties, aquifer recharge, aquifer and surface water interactions, and aquifer pumping. To the extent possible, the studies shall distinguish between the causes and effects of pumping occurring within the District and outside of the District. The results may be used to improve the models, tools, and methodologies used to analyze data and predict future groundwater levels and availability. The District will contract with a professional hydrogeologist to (i) conduct studies and/or (ii) establish the parameters for the studies and review the results of studies. The results of all studies shall be made available to the public in a reasonable manner. The District will hold one or more public meetings and provide a minimum of 90 calendar days for the public to provide written comments in addition to the meeting(s). [Amended July 2, 2019] [Amended May 12, 2020]
 - b. If Threshold Level 2 is exceeded, the District will re-evaluate the Management Plan and rules regarding management zones, recharge estimates, the collection and analysis of monitoring data, and proposed changes to DFCs for consideration in the joint planning process. As part of the re-evaluation, the District will hold one or more

public meetings and provide a minimum of 90 calendar days for the public to provide written comments in addition to the meeting(s). [Amended May 12, 2020]

c. If Threshold Level 3 is exceeded, the District will conduct a public hearing to discuss the status of the aquifers and develop a Level 3 Response Action Work Plan focused on achieving the District's goals and objectives, including DFCs and PDLs. The work plan will be completed within 6 months after the first public hearing and will be made available to the public through the District's web site. [Amended November 5, 2019]

i. The notice will include the cause for the notice, the fact that an additional review, evaluation and study is being made, and that a reduction of the maximum allowable production per acre and/or the permitted production may be approved following the review and evaluation. [Amended July 12, 2005]

ii. The general manager, in consultation with the district professional hydrogeologist, will review and evaluate the permit applications pending, the permits issued and the records of the District, estimated total production by exempt wells, and increase the frequency or locations of water drawdown monitoring within the Management Zone. If the notice is due to the average drawdown based on monitored water levels an evaluation of the reasons for the drawdown will be included in the review. [Amended July 12, 2005] [Amended June 12, 2012]

iii. The general manager will promptly report to the Board that notices have been given and the event that required the notice to be given. The general manager will advise the Board of the plan for review and evaluation recommended under (ii) and, if the plan will be implemented over a period of more than one month, during the evaluation, review, study and any additional monitoring period, the general manager will keep the Board advised of the progress of the review and evaluation. Upon completion of the review, evaluation and any additional monitoring, the general manager and district professional hydrogeologist will make a final report to the Board, together with their recommendation for action. [Amended July 2, 2019]

iv. If the general manager, in consultation with the district professional hydrogeologist, finds the evaluation, study, review and/or monitoring supports a recommendation that an adjustment of permitted production is recommended for a Management Zone or another Management Zone in which threshold level 3 was reached, the recommendation shall be consistent with the finding and provide supporting documentation for the limitation. [Added July 12, 2005] [Amended June 12, 2012]

v. The general manager may, after consultation with the district professional hydrogeologist and in combination with or in addition to the above, recommend any action or combination of actions set forth in Rule 16.4. [Amended June 12,

2012] [Amended July 13, 2021]

5. The terms, provisions and the actions provided for in this Rule 16.4 are in addition to and not in lieu of the terms, conditions and provisions of any other rule or provision of this Section 16. This rule does not limit the authority of the Board to act pursuant to any other rule. The Board shall have the discretion to take any action authorized by this Section 16. [Amended June 12, 2012]

EXHIBIT 2

NOTES:

- The following Tables can be accessed at:
<https://www.twdb.texas.gov/groundwater/dfc/2016jointplanning.asp> then clicking *Groundwater Management Area 12* followed by clicking *Summary by Groundwater Conservation District*
- The MAGs used in this *Petition for Inquiry* are identified as “Total” in the *County Column* (see immediately below) because the District’s Management Plan only refers to Total MAGs.

Groundwater Management Area 12 – Modeled Available Groundwater

Groundwater Conservation District	County	Aquifer	Modeled Available Groundwater							TWDB Report
			2010	2020	2030	2040	2050	2060	2069	
Post Oak Savannah GCD Total		Sparta	988	2,246	4,042	5,613	6,735	6,735	6,735	GR 17-030 MAG
Post Oak Savannah GCD Total		Yegua-Jackson	14,544	14,544	12,576	12,564	12,478	12,326	10,200	GR 17-030 MAG
Post Oak Savannah GCD Total		Brazos River Alluvium	79,142	76,290	75,203	76,193	76,189	76,186	76,185	GR 17-030 MAG
Post Oak Savannah GCD Total		Hooper	5,385	2,960	4,139	4,433	4,433	4,422	4,422	GR 17-030 MAG
Post Oak Savannah GCD Total		Simsboro	11,329	38,470	37,900	40,042	46,028	48,503	48,503	GR 17-030 MAG
Post Oak Savannah GCD Total		Calvert Bluff	1,713	1,036	1,036	1,036	1,036	1,036	1,036	GR 17-030 MAG
Post Oak Savannah GCD Total		Carrizo	670	4,705	5,176	6,117	6,352	7,058	7,058	GR 17-030 MAG
Post Oak Savannah GCD Total		Queen City	705	469	504	504	504	504	504	GR 17-030 MAG

Groundwater Management Area 12 – Modeled Available Groundwater

Groundwater Conservation District	County	Aquifer	Modeled Available Groundwater							TWDB Report
			2010	2020	2030	2040	2050	2060	2069	
Brazos Valley GCD	Brazos	Hooper	0	0	0	0	0	0	0	GR 17-030 MAG
Brazos Valley GCD	Robertson	Hooper	836	1,446	1,884	1,942	2,000	2,000	2,000	GR 17-030 MAG
Fayette County GCD	Fayette	Hooper	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	GR 17-030 MAG
Lost Pines GCD	Bastrop	Hooper	357	651	781	953	1,178	1,179	1,139	GR 17-030 MAG
Lost Pines GCD	Lee	Hooper	17	62	76	95	119	117	116	GR 17-030 MAG
Mid-East Texas GCD	Freestone	Hooper	3,006	4,341	4,578	4,814	5,051	5,288	5,501	GR 17-030 MAG
Mid-East Texas GCD	Leon	Hooper	0	0	0	0	0	0	0	GR 17-030 MAG
Mid-East Texas GCD	Madison	Hooper	0	0	0	0	0	0	0	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Hooper	19	1,085	1,515	1,623	1,623	1,623	1,623	GR 17-030 MAG
Post Oak Savannah GCD	Milam	Hooper	5,365	1,874	2,623	2,811	2,811	2,800	2,800	GR 17-030 MAG
No District-County	Falls	Hooper	726	727	734	741	749	749	749	GR 17-030 MAG
No District-County	Limestone	Hooper	1,488	1,382	1,410	1,444	1,496	1,496	1,414	GR 17-030 MAG
No District-County	Navarro	Hooper	16	11	11	11	11	11	11	GR 17-030 MAG
No District-County	Williamson	Hooper	5	5	5	5	5	5	5	GR 17-030 MAG
Brazos Valley GCD	Brazos	Simsboro	35,086	41,115	44,120	45,681	50,208	53,404	53,404	GR 17-030 MAG
Brazos Valley GCD	Robertson	Simsboro	37,236	41,673	42,061	42,468	42,794	42,794	42,794	GR 17-030 MAG
Fayette County GCD	Fayette	Simsboro	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	GR 17-030 MAG
Lost Pines GCD	Bastrop	Simsboro	6,508	14,253	15,673	16,311	17,334	15,947	16,279	GR 17-030 MAG
Lost Pines GCD	Lee	Simsboro	1,860	17,993	17,221	17,031	17,179	14,896	14,024	GR 17-030 MAG
Mid-East Texas GCD	Freestone	Simsboro	1,254	3,582	3,589	3,585	3,552	3,550	3,550	GR 17-030 MAG
Mid-East Texas GCD	Leon	Simsboro	263	3,359	3,457	3,538	3,617	3,623	3,623	GR 17-030 MAG
Mid-East Texas GCD	Madison	Simsboro	0	0	0	0	0	0	0	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Simsboro	627	17,687	21,616	25,103	28,858	30,409	30,409	GR 17-030 MAG
Post Oak Savannah GCD	Milam	Simsboro	10,702	20,783	16,284	14,940	17,171	18,094	18,094	GR 17-030 MAG
No District-County	Falls	Simsboro	139	140	141	143	146	146	146	GR 17-030 MAG
No District-County	Limestone	Simsboro	9,801	9,753	9,850	9,992	10,235	10,235	10,235	GR 17-030 MAG
No District-County	Navarro	Simsboro	6	4	4	4	4	4	4	GR 17-030 MAG
No District-County	Williamson	Simsboro	2	2	2	2	2	2	2	GR 17-030 MAG
Brazos Valley GCD	Brazos	Calvert Bluff	0	0	0	0	0	0	0	GR 17-030 MAG
Brazos Valley GCD	Robertson	Calvert Bluff	776	1,764	1,757	1,758	1,757	1,757	1,757	GR 17-030 MAG

Groundwater Management Area 12 – Modeled Available Groundwater

Groundwater Conservation District	County	Aquifer	Modeled Available Groundwater							TWDB Report
			2010	2020	2030	2040	2050	2060	2069	
Fayette County GCD	Fayette	Calvert Bluff	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	NULL¹	GR 17-030 MAG
Lost Pines GCD	Bastrop	Calvert Bluff	1,534	2,063	2,462	2,970	3,613	3,774	3,873	GR 17-030 MAG
Lost Pines GCD	Lee	Calvert Bluff	50	161	169	211	296	209	111	GR 17-030 MAG
Mid-East Texas GCD	Freestone	Calvert Bluff	878	754	734	728	714	714	714	GR 17-030 MAG
Mid-East Texas GCD	Leon	Calvert Bluff	2,817	2,819	2,953	3,065	3,189	3,201	3,201	GR 17-030 MAG
Mid-East Texas GCD	Madison	Calvert Bluff	4	0	0	0	0	0	0	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Calvert Bluff	0	87	87	87	87	87	87	GR 17-030 MAG
Post Oak Savannah GCD	Milam	Calvert Bluff	1,713	949	949	949	949	949	949	GR 17-030 MAG
No District-County	Limestone	Calvert Bluff	248	218	223	228	235	235	235	GR 17-030 MAG
No District-County	Navarro	Calvert Bluff	0	0	0	0	0	0	0	GR 17-030 MAG
No District-County	Williamson	Calvert Bluff	1	2	2	2	3	2	1	GR 17-030 MAG
Brazos Valley GCD	Brazos	Carrizo	1,196	3,717	3,724	3,737	3,761	3,763	3,763	GR 17-030 MAG
Brazos Valley GCD	Robertson	Carrizo	887	1,707	1,698	1,713	1,730	1,731	1,731	GR 17-030 MAG
Lost Pines GCD	Bastrop	Carrizo	2,408	4,692	5,308	6,042	7,929	8,205	8,295	GR 17-030 MAG
Lost Pines GCD	Lee	Carrizo	2,089	2,926	3,050	3,221	3,871	3,847	3,757	GR 17-030 MAG
Mid-East Texas GCD	Freestone	Carrizo	44	369	366	357	347	346	346	GR 17-030 MAG
Mid-East Texas GCD	Leon	Carrizo	694	8,108	8,051	8,110	8,193	8,200	8,200	GR 17-030 MAG
Mid-East Texas GCD	Madison	Carrizo	1,478	2,861	2,770	2,656	2,554	2,543	2,543	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Carrizo	647	4,383	4,821	5,698	5,917	6,575	6,575	GR 17-030 MAG
Post Oak Savannah GCD	Milam	Carrizo	23	322	355	419	435	484	484	GR 17-030 MAG
Brazos Valley GCD	Brazos	Queen City	541	836	883	887	891	891	891	GR 17-030 MAG
Brazos Valley GCD	Robertson	Queen City	0	368	309	309	309	309	309	GR 17-030 MAG
Fayette County GCD²	Fayette	Queen City	268	2,708	2,708	2,708	2,708	2,708	2,708	GR 17-030 MAG
Lost Pines GCD	Bastrop	Queen City	192	558	541	523	505	486	467	GR 17-030 MAG
Lost Pines GCD	Lee	Queen City	394	757	774	792	810	829	848	GR 17-030 MAG
Mid-East Texas GCD	Freestone	Queen City	0	0	0	0	0	0	0	GR 17-030 MAG
Mid-East Texas GCD	Leon	Queen City	624	594	594	594	594	594	594	GR 17-030 MAG
Mid-East Texas GCD	Madison	Queen City	148	380	380	380	380	380	380	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Queen City	685	416	447	447	447	447	447	GR 17-030 MAG
Post Oak Savannah GCD	Milam	Queen City	20	53	56	56	56	56	56	GR 17-030 MAG

Groundwater Management Area 12 – Modeled Available Groundwater

Groundwater Conservation District	County	Aquifer	Modeled Available Groundwater							TWDB Report
			2010	2020	2030	2040	2050	2060	2069	
Brazos Valley GCD	Brazos	Sparta	3,745	5,404	6,505	7,507	8,509	8,509	8,509	GR 17-030 MAG
Brazos Valley GCD	Robertson	Sparta	16	510	510	510	510	510	510	GR 17-030 MAG
Fayette County GCD ²	Fayette	Sparta	1,176	2,831	2,825	2,803	2,794	2,802	2,802	GR 17-030 MAG
Lost Pines GCD	Bastrop	Sparta	81	907	904	902	898	896	895	GR 17-030 MAG
Lost Pines GCD	Lee	Sparta	218	1,483	1,487	1,490	1,492	1,495	1,498	GR 17-030 MAG
Mid-East Texas GCD	Leon	Sparta	86	21	21	21	21	21	21	GR 17-030 MAG
Mid-East Texas GCD	Madison	Sparta	1,401	3,320	3,322	3,322	3,322	3,322	3,322	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Sparta	988	2,246	4,042	5,613	6,735	6,735	6,735	GR 17-030 MAG
Brazos Valley GCD	Brazos	Jackson	4,411	4,404	4,402	4,402	4,402	4,402	4,402	GR 17-030 MAG
Brazos Valley GCD	Brazos	Yegua	2,452	2,452	2,452	2,452	2,452	2,452	2,452	GR 17-030 MAG
Fayette County GCD ²	Fayette	Yegua-Jackson	9,262	9,262	9,262	9,262	9,262	9,261	9,261	GR 17-030 MAG
Lost Pines GCD	Bastrop	Yegua-Jackson	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	GR 17-030 MAG
Lost Pines GCD	Lee	Yegua-Jackson	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	GR 17-030 MAG
Mid-East Texas GCD	Leon	Yegua-Jackson	0	0	0	0	0	0	0	GR 17-030 MAG
Mid-East Texas GCD	Madison	Yegua-Jackson	809	809	809	809	809	809	809	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Yegua-Jackson	14,544	14,544	12,576	12,564	12,478	12,326	10,200	GR 17-030 MAG
Brazos Valley GCD	Brazos	Brazos River Alluvium	122,785	81,581	80,311	80,081	79,976	79,913	79,872	GR 17-030 MAG
Brazos Valley GCD	Robertson	Brazos River Alluvium	66,608	61,161	57,959	57,633	57,544	57,503	57,480	GR 17-030 MAG
Post Oak Savannah GCD	Burleson	Brazos River Alluvium	28,515	28,472	28,418	28,414	28,414	28,414	28,413	GR 17-030 MAG
Post Oak Savannah GCD	Milam	Brazos River Alluvium	50,626	47,818	47,785	47,779	47,775	47,773	47,771	GR 17-030 MAG
No District-County	Falls	Brazos River Alluvium	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	NULL ¹	GR 17-030 MAG