

ES Comments to TWD Board, June 21, 2012

Re: ES GMA-12 DFC Appeal Petition (Public Comment - 3 minutes)

Good Morning, Board Members and Staff,

I am Steve Box, Executive Director of Environmental Stewardship and Petitioner on the GMA-12 desired future conditions appeal. We recognize that your decisions need to be based on the factual information provided in the hearing and exhibits regarding our appeal. It is the lack of adherence to this basic principle that disappoints us the most.

Certainly we are disappointed in the Staff Report, but not so much that it favors the Districts, but that the Staff seems to have chosen to turn a blind eye to the facts that we have brought to your attention in this process, rather than facing these facts and dealing with them as required by the statutes and your own adopted administrative rules. Where we have met the burden of proof by providing compelling evidence, the staff has argued that the evidence was either "out of context," "outside the scope of these proceedings," or "conflicting and inconclusive" ... without bothering to substantiate the reasons for these conclusions. We consider this an abandonment of their duty to you ... the Board, to us ... the Petitioner, and to Texans on both sides of the issues.

My letter to you describes in more detail why we do not agree with the Staff recommendations, why we find them to be ***inconsiderate, incomplete, and unacceptable***, and why we recommend that you either find these DFCs unreasonable, or remand these recommendations back to the Staff to complete their work. I will only touch on only a few points here.

As a Petitioner, we brought legitimate concerns to the Board that were based on sound science and public policies of the State Legislature ... all clearly within the scope and context of the criteria established by your own Administrative Rules. We have met the burden of proof by citing technical and scientific studies and placing them within the context of the laws of the State of Texas and the adopted desired future conditions of GMA-12. If anyone is "out of context", it is the staff report.

First, the Staff failed to provide substantiation of their determination that our exhibits on the impact of groundwater pumping on property rights were “outside the scope of consideration in this proceeding”.

As a Policy Board, you need a rigorous analysis of the impacts of groundwater pumping on surface water property rights. Otherwise, you run the risk of leading groundwater conservation districts down a path of uncompensated takings claims as described in the recent Supreme Court opinion in the Edwards Aquifer Authority v. Day case.

Clearly criterion 5, “consider the impacts on private property rights,” was on the mind of the TWDB as a *legitimate consideration in this proceeding* when it passed its administrative rules. Somehow the Staff makes a giant leap to erroneous justifications for abandoning their responsibility to provide you and Texans with a substantiated reason for dismissing our evidence without analysis and discussion.

Second, on item 5, “consider the state’s policy and legislative directives,” the staff accurately points out that the directives of Senate Bill 3 are addressed to TCEQ, TWDB and Texas Parks and Wildlife Department, not to the Districts”. That is exactly our point. *As directed by statute, the Texas Water Development Board and its Staff has a responsibility to ensure that, in carrying out mandates under other Texas statutes, they guide other entities, such as groundwater conservation districts, in such a way as to avoid conflict with these statutes.* The TWDB has abandoned this duty and needs to take responsibility for its negligence, not pass the buck to the Districts or Environmental Stewardship.

Thank you for the opportunity to comment.