

SOAH DOCKET NO. 952-19-0705

Application of Lower Colorado	§	BEFORE THE STATE OFFICE
River Authority (LCRA) for Eight	§	
Operating and Transport Permits in	§	
Bastrop County, Texas, (Well Nos.	§	OF
58-55-5-0032; 58-55-5-0033; 58-55-4-	§	
0016; 58-55-4-0017; 58-55-4-0018;	§	
58-55-4-0019; 58-55-4-0020; and 58-	§	ADMINISTRATIVE HEARINGS
55-4-0021).		

**ENVIRONMENTAL STEWARDSHIP’S RESPONSE IN SUPPORT OF THE
GENERAL MANAGER’S MOTION TO ESTABLISH PROCESS REGARDING
PARTY STATUS**

I. INTRODUCTION

Environmental Stewardship has submitted a request for contested case hearing and party status in regards to the application by the Lower Colorado River Authority (LCRA) for the permits identified above. The General Manager of the Lost Pines Groundwater Conservation District (“Lost Pines”) has filed a motion seeking to establish a process for determining party status in this matter. In that motion, the General Manager requests that the ALJs allow Environmental Stewardship to participate as parties to the proceeding, so long as they establish standing, at a later time, via sworn pre-filed testimony or sworn affidavits. Environmental Stewardship supports the proposal laid out in the General Manager’s motion. Further, attached to this Response are sworn affidavits in support of Environmental Stewardship’s request for party status. Environmental Stewardship offers these affidavits, in an abundance of caution, and so that they are available for the ALJs review before the prehearing conference.

II. Environmental Stewardship Qualifies for Party Status

Under the Texas Water Code, a person with a personal justiciable interest affected by a permit application is entitled to party status in a contested case hearing held with regard to a permit application.¹ This is equivalent to the test for constitutional standing. An association has standing in a matter when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.² Environmental Stewardship is an organization whose purposes include ensuring that the supply and quality of water in the Colorado River Basin is adequate to meet environmental and inhabitant needs. Environmental Stewardship seeks to participate in the hearing on LCRA's permit in order to protect the availability of water in Bastrop and Lee County within the basin of the Colorado River, and to protect the Colorado River and its tributaries, and the Carrizo-Wilcox, Sparta, and Queen City Aquifers from adverse impacts as a result of groundwater pumping. Accordingly, the interests that Environmental Stewardship seeks to protect through participation in the hearing are germane to the organization's purposes.

Several members of Environmental Stewardship would have standing to participate in this matter in their own right, including Philip Cook, Hugh Brown, Claire Wunderlin and Michael Wunderlin.

¹ Tex. Water Code § 36.415(b)(2).

² *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993).

Philip Cook

Philip P. Cook is a member of Environmental Stewardship.³ He owns several properties and wells that will potentially be adversely impacted by LCRA's proposed pumping.

Mr. Cook owns approximately 2.2 acres at 1182 Shiloh Road A and B with a groundwater well that provides domestic use groundwater to residences at that property.⁴ This well is registered with LPGCD as Well No. 586120016.⁵ This well is completed into the Simsboro aquifer formation, and draws water from the Simsboro aquifer formation.⁶ Mr. George Rice has evaluated the potential impact of LCRA's proposed pumping upon this well, and has concluded that LCRA's proposed pumping would likely cause a drawdown of the Simsboro aquifer formation at this well.⁷

Mr. Cook also owns a groundwater well located at 1193 Shiloh Road that is registered with Lost Pines Groundwater Conservation District as Well No. 5861220.⁸ This well is completed in the Simsboro and Hooper formations and likely draws water from the Simsboro and Hooper aquifer formations.⁹ Mr. Rice has concluded that the pumping proposed by LCRA will likely cause a drawdown of the Simsboro and Hooper aquifer formations at this well.¹⁰

³ Cook Affidavit.

⁴ Cook Affidavit.

⁵ Cook Affidavit.

⁶ Rice Affidavit.

⁷ Rice Affidavit.

⁸ Cook Affidavit.

⁹ Rice Affidavit.

¹⁰ Rice Affidavit.

Mr. Cook also owns a groundwater well located at 1192 Shiloh Road that is registered with Lost Pines Groundwater Conservation District as Well No. 5861221.¹¹ This well is completed in the Simsboro and Hooper aquifer formations and draws water from the Simsboro and Hooper aquifer formations.¹² Mr. Rice has concluded that the pumping proposed by LCRA will likely cause a drawdown of the Simsboro and Hooper aquifer formations at this well.¹³

The drawdown of groundwater beneath Mr. Cook's properties, and the reduction of the water levels within his wells, will impact his use and enjoyment of his property and result in the impairment of his groundwater rights. Mr. Cook does not have the availability of an additional water-bearing formation below the Hooper that would be available to him for water if the Hooper formation at his location were to be depleted. Accordingly, Philip Cook is an affected person since he would potentially be adversely impacted by the proposed permits.

Hugh Brown

Hugh Brown is also a member of Environmental Stewardship.¹⁴ He owns more than 100 acres at 3026 County Road 316 near Lexington, Texas, in Lee County.¹⁵ On his property he owns three wells, which are registered as LPGCD Well Nos. 5839947, 5839948 and 5839949.¹⁶

¹¹ Cook Affidavit.

¹² Rice Affidavit.

¹³ Rice Affidavit.

¹⁴ Brown Affidavit

¹⁵ Brown Affidavit

¹⁶ Brown Affidavit.

George Rice has also evaluated Mr. Brown's wells. Mr. Rice has concluded that Well No. 5839948 is completed into the Simsboro aquifer formation.¹⁷ Mr. Rice's analysis reflects a drawdown within the Simsboro aquifer at this well of about 38 feet due to LCRA's proposed pumping, which will result in a drawdown of the water in this well.¹⁸ This well is relied upon as a source water for a pond that forms a wetland for a variety of flora and fauna and to implement management activities that support the wildlife tax exemption for the property.

Mr. Rice has concluded that Well Nos. 5839947 and 5839949 are completed into the Calvert Bluff aquifer formation, and he has likewise concluded that LCRA's proposed pumping is likely to cause a drawdown of water within each of these wells.¹⁹

The drawdown of groundwater beneath Mr. Brown's properties, and the reduction of the water levels within his wells, will impact his use and enjoyment of his property and result in the impairment of his groundwater rights. Mr. Brown also has a protected ownership interest in the Hooper formation below his Simsboro and Calvert Bluff wells. Accordingly, Mr. Brown is an affected person since he would potentially be adversely impacted by the proposed permits.

Claire and Michael Wunderlin

Claire Snider Wunderlin and Michael Wunderlin are members of Environmental Stewardship.²⁰ They own an approximately five-acre property near 352 Kelley Road

¹⁷ Rice Affidavit.

¹⁸ Rice Affidavit.

¹⁹ Rice Affidavit.

²⁰ Wunderlin Affidavit.

near Bastrop, Texas.²¹ On this property they own a groundwater well, which is registered with Lost Pines Groundwater Conservation District as Well No. 5855712.²² This well is used as the source of water for the property, including the source of water for a pond that forms a wetland for a variety of flora and fauna including the endangered "Houston Toad" species.²³ This well is relied upon to implement management activities that support the wildlife tax exemption for the property.²⁴

Based upon information provided to him, George Rice has evaluated the Wunderlin well and the potential impacts of LCRA's pumping upon that well. He has concluded that the Wunderlin well draws water from the Calvert Bluff aquifer formation, and is in such proximity to the proposed LCRA wells that the withdrawal of water as proposed will drain water from beneath their property, and reduce the water level within their well.²⁵ Based on his analysis, Mr. Rice expects that LCRA's requested pumping would cause a drawdown of the Simsboro formation at the Wunderlin property of approximately 250 feet.²⁶

This drainage of water from beneath the Wunderlin property, and reduction of the water levels in their well, will impact their use and enjoyment of their property and result in the impairment of their groundwater rights. The Wunderlins also have a protected ownership interest in the Simsboro and Hooper formation below their Calvert Bluff well.

²¹ Wunderlin Affidavit.

²² Wunderlin Affidavit.

²³ Wunderlin Affidavit.

²⁴ Wunderlin Affidavit.

²⁵ Rice Affidavit.

²⁶ Rice Affidavit.

Accordingly, Claire Snider Wunderlin and Michael Wunderlin would be adversely impacted by the proposed permits.

III. Conclusion & Prayer

Environmental Stewardship supports the Motion submitted by the General Manager of Lost Pines, and based on that Motion and on the attached affidavits, Environmental Stewardship requests to be admitted as a party in the above-referenced contested case hearing to consider LCRA's permit applications.

Respectfully submitted,

/s/ Eric Allmon
Eric Allmon

**FREDERICK, PERALES, ALLMON
& ROCKWELL, P.C.**
1206 San Antonio
Austin, TX 78701
Tel. (512) 469-6000
Fax (512) 482-9346
ON BEHALF OF ENVIRONMENTAL
STEWARDSHIP

CERTIFICATE OF SERVICE

I certify that a copy of Environmental Stewardship's Response in Support of the General Manager's Motion to Establish Process Regarding Party Status was filed on December 14, 2018 with SOAH and served via email to the parties below.

/s/ Eric Allmon
Eric Allmon

Natasha J. Martin
Graves, Dougherty, Hearon & Moody
401 Congress Ave., STE 2200
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Attorney for LPGCD

Lyn Clancy
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Lyn.clancy@LCRA.org
Attorney for LCRA

SOAR DOCKET NO. 952-19-0705

APPLICATION LOWER § BEFORE THE STATE OFFICE
COLORADO RIVER AUTHORITY § OF
FOR OPERATING AND § ADMINISTRATIVE HEARINGS
TRANSPORT PERMITS FOR §
WELLS IN BASTROP COUNTY

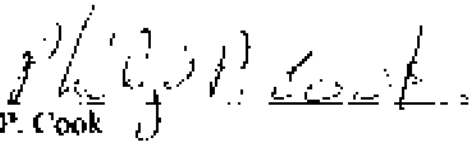
AFFIDAVIT OF PHILIP P. COOK

STATE OF TEXAS §
§
COUNTY OF BASTROP §

BEFORE ME, the undersigned Notary Public on this day, personally appeared Philip P. Cook, known to me to be the person whose name is subscribed hereto, and after being duly sworn on his oath stated the following:

1. My name is Philip P. Cook. I am over eighteen (18) years of age and of sound mind, have never been convicted of a felony, and am otherwise competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, all of which are true and correct.
2. I am a member of Environmental Stewardship.
3. I own 4.981 acres at 1182 A Shiloh Road and 1182 B Shiloh Road Cedar Creek. On that property I own a groundwater well, which is registered with the Lost Pines Groundwater Conservation District as Well No. 586120016. That groundwater well is used as a domestic water supply for residences on this property.
4. I also co-own property at 1192 Shiloh Road comprising approximately 12.8 acres. On that property, I own a groundwater well registered with the Lost Pines Groundwater Conservation district as Well No. 5861221 (6/4/01). That groundwater well is used for both domestic and agricultural uses.
5. I own part interest in a groundwater well located at 1193 Shiloh Road registered with the Lost Pines Groundwater Conservation District as Well No. 5861220 which is used for domestic purposes.

FURTHER AFFIANT SAYETH NOT.


Philip P. Cook

SUBSCRIBED AND SWORN TO BEFORE ME this 10 day of December 2018.


Notary Public, State of Texas



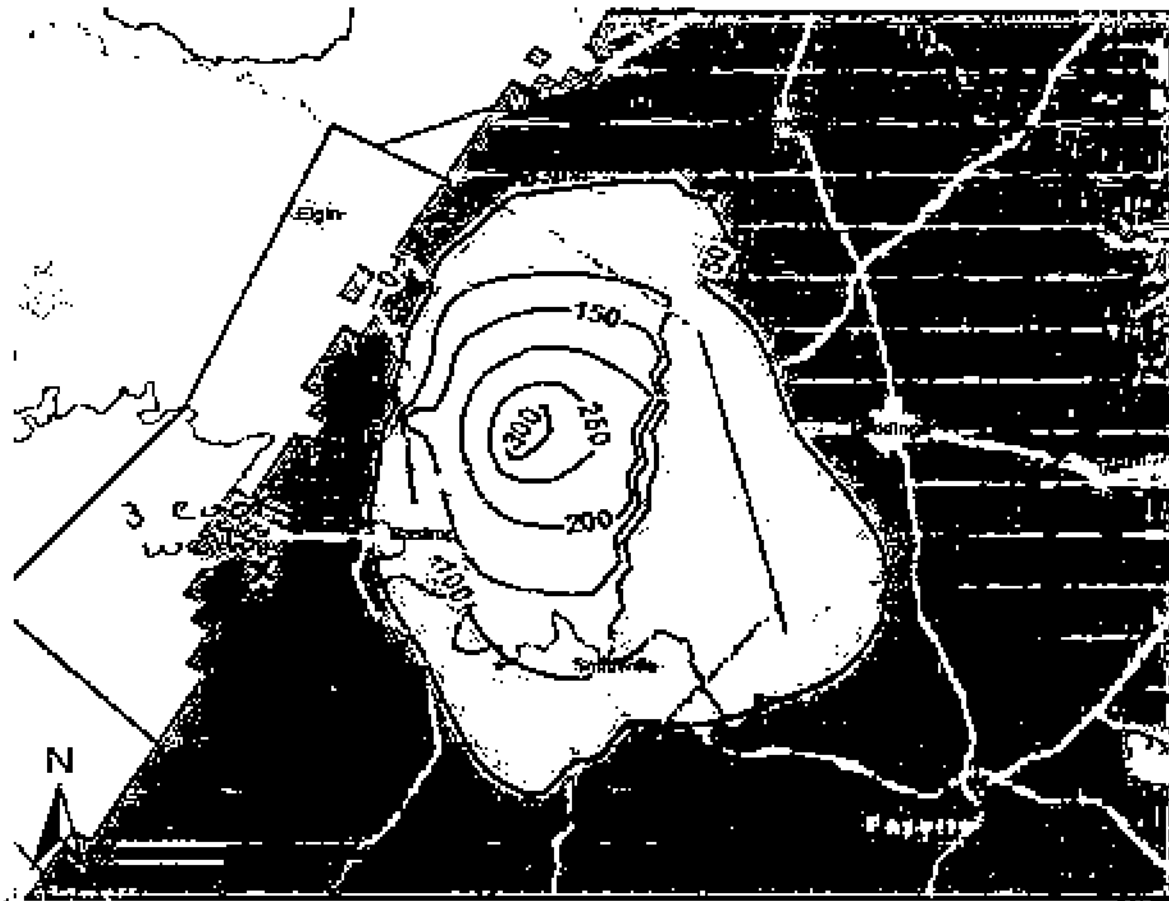
My Commission Expires:

Nov. 18, 2022

EXHIBIT A TO AFFIDAVIT

Source: Review of LCRA Permit Application Packet, prepared by Andrew Donnelly, Daniel B. Stephens & Associates, Inc. for Lost Pines Groundwater Conservation District in connection with Lower Colorado River Authority, Permit Application, Permit #58-55-4 (lostpineswater.org)

Figure 2. Project-specific 50-year drawdown (in feet) in the Simsboro Aquifer attributable to the proposed LCRA pumpage estimated using the GAM.



Cook Properties

SOAH DOCKET NO. 952-19-0705

**APPLICATION LOWER § BEFORE THE STATE OFFICE
COLORADO RIVER AUTHORITY § OF
FOR OPERATING AND § ADMINISTRATIVE HEARINGS
TRANSPORT PERMITS FOR 8 §
WELLS IN BASTROP COUNTY**

AFFIDAVIT OF GEORGE RICE

STATE OF TEXAS §
§
COUNTY OF BEXAR §

BEFORE ME, the undersigned Notary Public on this day, personally appeared George Rice, known to me to be the person whose name is subscribed hereto, and after being duly sworn on his oath stated the following:

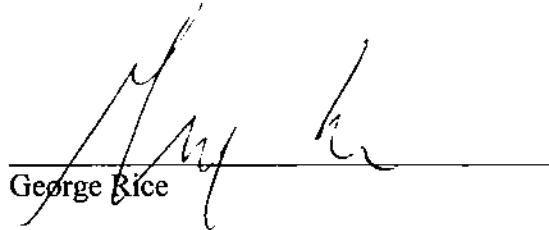
1. My name is George Rice. I am over eighteen (18) years of age and of sound mind, have never been convicted of a felony, and am otherwise competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, all of which are true and correct.
2. Attachment A to this affidavit is an accurate copy of my current resume.
3. Based on information provided to me, I have evaluated the formations from which groundwater wells owned by Philip Cook likely draw groundwater. I have performed this evaluation by determining the intervals at which the wells are screened, and determining the formation likely present at those intervals. I have also correlated the location of these wells to modeling of drawdown that will be caused by the groundwater permits requested by the Lower Colorado River Authority ("LCRA") now under consideration in SOAH Docket No. 952-19-0705.
4. Based upon my evaluation, I am able to conclude that Mr. Cook's well located at 1182 Shiloh Road (A and B) (Cook 1), registered with Lost Pines Groundwater Conservation District as Well No. 586120016 also draws water from the Simsboro aquifer formation. I am further able to conclude that the pumping proposed by LCRA will likely cause a drawdown of the Simsboro aquifer formation at this well.
5. Based upon my evaluation, I am able to conclude that the groundwater well located at 1193 Shiloh Road (Cook 2), registered with Lost Pines Groundwater Conservation District as Well No. 5861220 in which I understand Mr. Cook owns an interest,

probably draws water from the Simsboro and Hooper aquifer formations. I am further able to conclude that the pumping proposed by LCRA will likely cause a drawdown of the Simsboro and Hooper aquifer formations at this well.

6. Based upon my evaluation, I am able to conclude that Mr. Cook's well located at 1192 Shiloh Road (Cook 3), registered with Lost Pines Groundwater Conservation District ("LPGCD" or the "District") as Well No. 5861221, draws water from the Simsboro and Hooper aquifer formations. I am further able to conclude that the pumping proposed by LCRA will likely cause a drawdown of the Simsboro and Hooper aquifer formations at this well.
7. Based on information provided to me, I have evaluated the formations from which the groundwater well owned by Claire Snider Wunderlin and Michael Wunderlin (the "Wunderlins") likely draw groundwater. I have performed this evaluation by determining the intervals at which the wells are screened, and determining the formation likely present at those intervals. I have also correlated the location of these wells to modeling of drawdown that will be caused by the groundwater permits requested by the LCRA now under consideration in SOAH Docket No. 952-19-0705.
8. Based upon my evaluation, I am able to conclude that the groundwater well owned by the Wunderlins and registered with Lost Pines Groundwater Conservation District as Well No. 5855712 draws water from the Calvert Bluff aquifer formation. I am further able to conclude that the pumping proposed by LCRA will likely cause a drawdown of water within this well. I am also able to conclude that at the location of the property owned by the Wunderlins at 352 Kelley Road where this well is located, the pumping proposed by the LCRA will cause a drawdown of the Simsboro aquifer formation of approximately 254 feet.
9. Based on information provided to me, I have evaluated the formations from which groundwater wells owned by Hugh Brown likely draw groundwater. I have performed this evaluation by determining the intervals at which the wells are screened, and determining the formation likely present at those intervals. I have also correlated the location of these wells to modeling of drawdown that will be caused by the groundwater permits requested by the LCRA now under consideration in SOAH Docket No. 952-19-0705.
10. Based upon my evaluation, I am able to conclude that the groundwater well owned by Mr. Brown located at 3026 County Road 316 near Lexington, Texas (Brown 1), which is registered with LPGCD as Well No. 5839948 is completed into the Simsboro aquifer formation, and draws water from the Simsboro aquifer formation. The pumping proposed by LCRA is likely to cause a drawdown of water in the Simsboro aquifer formation at the location of this up-dip well of approximately 38 feet, and that proposed pumping is likely to cause a drawdown of the water in this well.

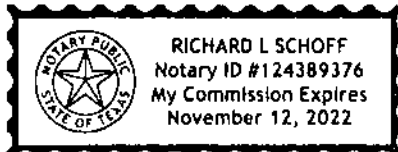
11. Based upon my evaluation, I am able to conclude that the groundwater well owned by Mr. Brown located at 3026 County Road 316 near Lexington, Texas (Brown 2), which is registered with LPGCD as Well No. 5839947 is completed into the Calvert Bluff aquifer formation, and draws water from the Calvert Bluff aquifer formation. The pumping proposed by LCRA is likely to cause a drawdown of water in the Simsboro aquifer formation at the location of this well of approximately 38 feet, and that proposed pumping is likely to cause a drawdown of the water in this well.
12. Based upon my evaluation, I am able to conclude that the groundwater well owned by Mr. Brown located at 3026 County Road 316 near Lexington, Texas (Brown 3), which is registered with LPGCD as Well No. 5839947 is completed into the Calvert Bluff aquifer formation, and draws water from the Calvert Bluff aquifer formation. The pumping proposed by LCRA is likely to cause a drawdown of water in the Simsboro aquifer formation at the location of this well of approximately 38 feet, and that proposed pumping is likely to cause a drawdown of the water in this well.

FURTHER AFFIANT SAYETH NOT.


George Rice

SUBSCRIBED AND SWORN TO BEFORE ME this 10th day of December 2018.


Notary Public, State of Texas



My Commission Expires: Nov 12, 2022

SOAH DOCKET NO. 952-19-0705

**APPLICATION LOWER § BEFORE THE STATE OFFICE
COLORADO RIVER AUTHORITY § OF
FOR OPERATING AND § ADMINISTRATIVE HEARINGS
TRANSPORT PERMITS FOR 8 §
WELLS IN BASTROP COUNTY**

AFFIDAVIT OF HUGH BROWN

STATE OF TEXAS

COUNTY OF LEE

5/15/2019 10:08 AM

BEFORE ME, the undersigned Notary Public on this day, personally appeared Hugh Brown, known to me to be the person whose name is subscribed hereto, and after being duly sworn on his oath stated the following:

- My name is Hugh Brown. I am over eighteen (18) years of age and of sound mind, have never been convicted of a felony, and am otherwise competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, all of which are true and correct.
- I am a member of Environmental Stewardship.
- I own more than 100 acres at 3026 County Road 316 near Lexington, Texas in Lee County.
- On this property I own three groundwater wells, registered with Lost Pines Groundwater Conservation District as Wells No. 5839947, 5839948, and 5839949.

FURTHER AFFIANT SAYETH NOT.

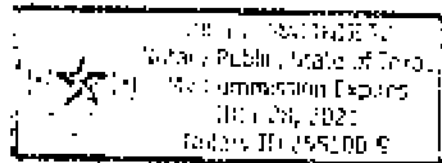
Hugh Brown
Hugh Brown

SUBSCRIBED AND SWORN TO BEFORE ME this *9th* day of December 2018.

Judy R. Marshall
Notary Public, State of Texas

My Commission Expires:

1/18/2021



SOAH DOCKET NO. 952-19-0705

**APPLICATION OF LOWER §
COLORADO RIVER AUTHORITY § BEFORE THE STATE OFFICE
FOR OPERATING AND § OF
TRANSPORT PERMITS FOR § ADMINISTRATIVE HEARINGS
EIGHT WELLS IN BASTROP §
COUNTY §**

AFFIDAVIT OF CLAIRE SNIDER WUNDERLIN

**STATE OF TEXAS §
§
COUNTY OF BASTROP §**

BEFORE ME, the undersigned Notary Public on this day, personally appeared Claire Snider Wunderlin, known to me to be the person whose name is subscribed hereto, and after being duly sworn on her oath stated the following:

- 1. My name is Claire Snider Wunderlin. I am over eighteen (18) years of age and of sound mind, have never been convicted of a felony, and am otherwise competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, all of which are true and correct.**
- 2. With Michael Wunderlin, I jointly own an approximately five-acre property near 352 Kelley Road near Bastrop, Texas.**
- 3. On this property I own a groundwater well, which is registered with Lost Pines Groundwater Conservation District as Well No. 5855712. This well is used as the source of water for my property, and is the source of water for a pond that forms a wetland for a variety of flora and fauna including the endangered "Houston Toad" species.**
- 4. The property I jointly own at 352 Kelley Road near Bastrop Texas qualifies for a wildlife exemption from certain property taxes.**
- 5. Well No. 5855712 is relied upon to implement management activities that support the wildlife tax exemption for that property.**

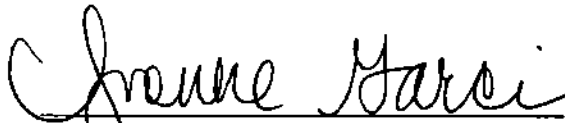
6. Based on the location of our property, as I have approximately located it on the District's map of the project-specific projected drawdown of the Simsboro formation of the Carrizo-Wilcox Aquifer ("Aquifer") by the proposed LCRA Project, Permit No. 58-55-4, attached hereto as Exhibit A, the pumping proposed by LCRA will cause a drawdown in the Simsboro formation under our property, and will cause drawdown in the other Aquifer formations under my property and at my well.

FURTHER AFFIANT SAYETH NOT.

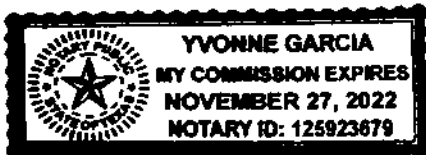


Claire Snider Wunderlin

SUBSCRIBED AND SWORN TO BEFORE ME this 12th day of December 2018.



Notary Public, State of Texas



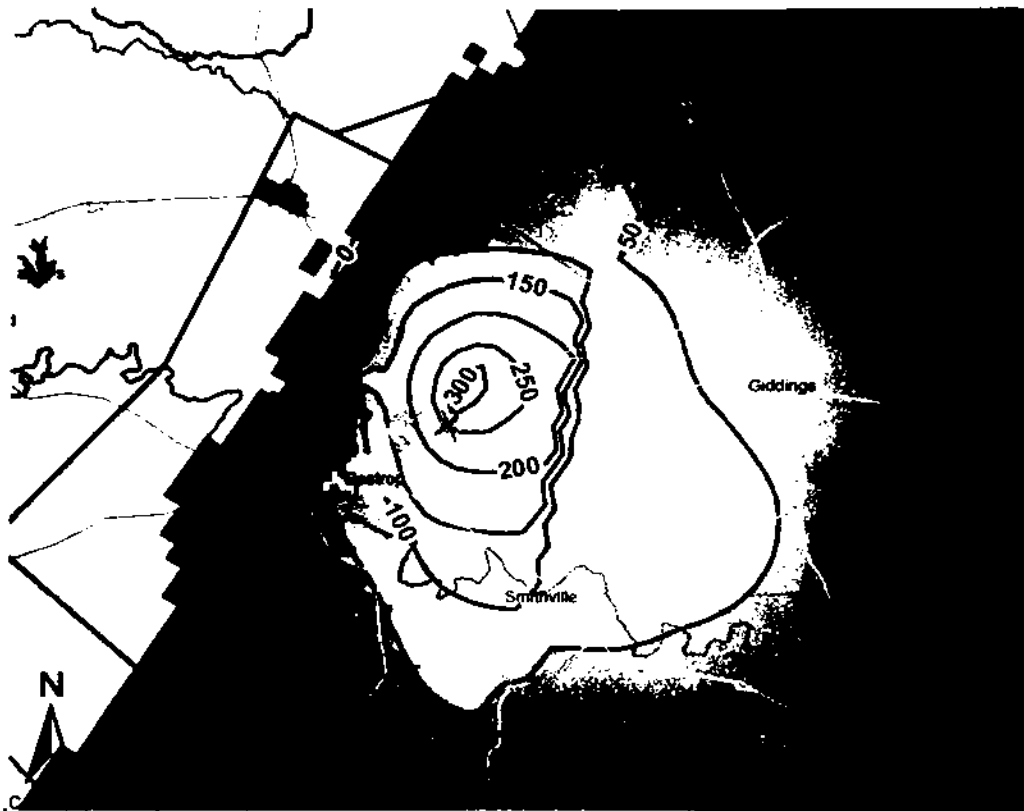
My Commission Expires:

11-27-2022

EXHIBIT A TO AFFIDAVIT

Source: Review of LCRA Permit Application Packet, prepared by Andrew Donnelly, Daniel B. Stephens & Associates, Inc. for Lost Pines Groundwater Conservation District in connection with Lower Colorado River Authority, Permit Application, Permit #58-55-4 (lostpineswater.org)

Figure 2. Project-specific 50-year drawdown (in feet) in the Simsboro Aquifer attributable to the proposed LCRA pumpage estimated using the GAM.



x Wunderlin well location