

**SOAH DOCKET NO. 952-19-0705**

<b>APPLICATION OF LOWER</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COLORADO RIVER AUTHORITY</b>	<b>§</b>	
<b>FOR OPERATING AND</b>	<b>§</b>	<b>OF</b>
<b>TRANSPORT PERMITS FOR</b>	<b>§</b>	
<b>EIGHT WELLS IN BASTROP</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>COUNTY, TEXAS</b>	<b>§</b>	

**ENVIRONMENTAL STEWARDSHIP’S REPLY TO RESPONSE TO MOTION  
FOR LEAVE TO SUPPLEMENT PREFILED TESTIMONY AND EXHIBITS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Protestant Environmental Stewardship files this reply to the responses filed by LCRA and the Lost Pines Groundwater Conservation District General Manager to Environmental Stewardship’s motion for leave to supplement the prefiled testimony of their expert witnesses, Mr. George Rice and Mr. Joseph Trungale, and prefiled exhibits. For support, Environmental Stewardship offers the following:

**I. Background**

Both LCRA and the District’s General Manager object to Environmental Stewardship’s motion for leave to submit supplemental prefiled evidence, for a number of reasons. Environmental Stewardship will each of those reasons, in turn, below.

**II. Timeliness of the supplemental evidence**

Both LCRA and the General Manager complain that the supplemental evidence is not timely. Both point to the ALJs’ Procedural Schedule in this case and the applicable SOAH rules for support. But neither the adopted procedural schedule nor the SOAH rules prohibit the filing of supplemental evidence, particularly when such evidence is relevant and only recently became available, as in this case.

SOAH rule 155.425(a) states that the ALJs “shall exercise reasonable control over the mode and order of presenting . . . witness testimony and other evidence. . .” 1 Tex. Admin. Code § 155.425(a). Rule 155.425(b) recognizes that the ALJs “designate the order

in which the parties will present evidence and argument,” and that “[g]enerally, the party with the burden of proof will present evidence first.” 1 Tex. Admin. Code § 155.425(b).

The ALJs have adopted a procedural schedule that provides deadlines for the submission of prefiled testimony and evidence, which generally allows the hearing to progress efficiently. LCRA is the party with the burden of proof, and according to the procedural schedule adopted in this case, LCRA will be presenting its evidence first, in accordance with the SOAH rules. The procedural schedule includes deadlines for all parties to submit their prefiled testimony and evidence, but these dates do not create a deadline by which expert witnesses must cease performing any work in relation to this case.

Environmental Stewardship submitted its prefiled evidence in June 2019, including testimony by expert witnesses, George Rice and Joseph Trungale. Although Mr. Rice and Mr. Trungale completed their written testimony by the June 28 deadline, they have continued to analyze information and new data that have become available to them, as they prepare for the upcoming hearing. In doing so, they have updated their analyses and offered additional bases and additional foundational data in support of their opinions.

As explained in Environmental Stewardship’s motion for leave to supplement, Mr. Rice reviewed the new pumping file for the Groundwater Availability Model, which only became available to him in late September. Mr. Trungale reviewed the testimony of two new witnesses identified by LCRA in August, as well as the information referenced in their prefiled testimony.

Allowing Environmental Stewardship to supplement its prefiled testimony with this new information will promote efficiency in the progression of the hearing. It will also ensure that Environmental Stewardship’s experts’ opinions are accurately represented as of the date of the hearing, and that the foundational basis for their opinions has been made available, in its most current form, to the various parties and the ALJs.

Considering that testimony from all witnesses at the hearing is intended to be premised upon the information available to the witness at the time of the hearing, SOAH has recently affirmed the ability of parties to supplement their pre-filed testimony prior to the hearing on the merits. In the matter of the *Application of Vulcan Construction*

*Materials, LLC, for Permit No. 147392L001 in Comal County, Texas,*<sup>1</sup> protestants were granted leave to supplement witness testimony on June 7, 2019 prior to the commencement of a hearing on June 11, 2019. Over objections by the applicant, SOAH admitted this supplemental testimony.<sup>2</sup>

LCRA argues that the new pumping file that forms the basis of Mr. Rice's supplemental prefiled testimony was available to him since August 2, 2019. But this is simply not true. The pumping file was presented at the GMA-12 meeting on September 24. Environmental Stewardship's representative requested the pumping file before September 24, but the file was not made available to Environmental Stewardship until after September 24. At the January 29 GMA-12 meeting there was a consensus that "each GCD would continue to update their pumping files through 2018...and this updated pumping information needed to be completed in the next 30-60 days."<sup>3</sup> At the May 30 GMA-12 meeting "George Rice asked when updated pumping files for GMA 12 could be obtained. Mr. Westbrook stated as soon as they were completed and became public they would be available to the public."<sup>4</sup> At the August 2 GMA-12 meeting "George Rice asked when the pumping files for the next GAM run will be available. Mr. Siefert estimated 2-3 weeks after the updates were made to the files."<sup>5</sup> At the September 24 GMA-12 meeting item 14 was set to discuss updated pumping files.<sup>6</sup> Following the meeting, Steve Box emailed Mr. Westbrook to request the updated pumping file by Wednesday, September 25.<sup>7</sup>

If Dr. Young had access to the pumping file since August 2, then, Dr. Young cannot claim surprise or prejudice by the submission of supplemental prefiled by Mr. Rice. Dr. Young could have conducted his own analysis using the new pumping file, as early as August 2. Mr. Rice, however, did not have access to this pumping file until after September 24.

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<sup>1</sup> *Application of Vulcan Construction Materials, LLC, for Permit No. 147392L001 in Comal County, Texas*, SOAH Docket No. 582-19-1955 ("Vulcan Construction").

<sup>2</sup> *Vulcan Construction*, Hearing Tr. V. 1 at 4-5.

<sup>3</sup> GMA-12 January 29, 2019 Meeting Minutes, Item 7. (Attachment A)

<sup>4</sup> GMA-12 May 30, 2019 Meeting Minutes, Item 7. (Attachment B)

<sup>5</sup> GMA-12 August 2, 2019 Meeting Minutes. Item 10. (Attachment C)

<sup>6</sup> GMA-12 September 24, 2019 Meeting Agenda. Item 14. (Attachment D)

<sup>7</sup> Attachment E

### **III. Supplemental evidence is not repetitious**

Both LCRA and the District's General Manager argue that Environmental Stewardship's motion for leave should be denied because the supplemental evidence is repetitious. They both argue that because Mr. Rice and Mr. Trungale both testify that the new data and their latest analysis did not affect their ultimate conclusions, the supplemental testimony and evidence are unduly repetitious.

While Mr. Rice's and Mr. Trungale's ultimate conclusions remain the same, they have updated their analysis based on new foundational data. That is, the underlying bases for their conclusions have changed.

Mr. Rice's conclusion is now based on his evaluation of the GAM, using the latest pumping file. This presents the most current and best available information. This information was not available in June, when Mr. Rice was preparing his prefiled written testimony. Mr. Rice, however, has not yet testified under oath, because the hearing has not yet commenced. Once he offers his testimony under oath, it is only reasonable that he, as an expert witness in this case, would want to ensure that the opinions he offers are based on the most recent and best available information. The fact that this more recent data became available *after* the deadline for submitting written prefiled evidence should not preclude him from offering sworn testimony based on this more recent and better data.

Similarly, at the time Mr. Trungale was preparing his written prefiled testimony, no witness had been identified by LCRA or any other party as an expert who would be evaluating surface water impacts based on WAM modeling. LCRA's prefiled rebuttal evidence included new testimony regarding use of the WAM to evaluate surface water impacts. LCRA's rebuttal experts' opinions were not available to Mr. Trungale at the time he prepared his written prefiled. Having reviewed this newly available information, Mr. Trungale conducted additional analysis and evaluation of surface water impacts, and this latest evaluation provides further support—additional foundational bases—for his opinions.

In short, the supplemental evidence offered by Environmental Stewardship is not unduly repetitious. It provides further foundational support for Environmental Stewardship's experts' opinions.

**IV. No party will be prejudiced by this evidence.**

Both LCRA and the District's General Manager claim that they will be prejudiced if Environmental Stewardship's motion for leave is granted. But neither offer a convincing argument to support the claim.

The District's General Manager did not conduct an independent analysis of impacts to surface water—certainly not based on the WAM—and so, cannot claim prejudice by Mr. Trungale's supplemental prefiled evidence. The supplemental evidence offered by Mr. Trungale is based, in part, on the opinions offered by LCRA's rebuttal witnesses. Thus, LCRA cannot claim prejudice by Mr. Trungale's supplemental evidence either. LCRA could have conducted the same analysis that Mr. Trungale conducted and that forms the basis of his supplemental testimony.

Mr. Rice's testimony is based on a new pumping file. That pumping file has been available to the District's General Manager and to LCRA for at least as long as it has been available to Mr. Rice. Both could have conducted their own analysis based on this new pumping file.

Both LCRA and the District's General Manager bear the burden of evaluating impacts of LCRA's proposed pumping on natural resources and surface water rights. Neither party has presented any reasonable explanation to justify their unwillingness to implement the latest pumping file in their GAM analyses. Their claims of prejudice are based on nothing more than the fact that Mr. Rice elected to use the latest pumping file, in preparation for the upcoming hearing, as it presents the most recent and best available information.

**V. Conclusion and Prayer**

Neither LCRA nor the District's General Manager has identified any rule or other order that prohibits a party from submitting supplemental prefiled, based on new

information; nor have they shown that they would be prejudiced by the submission of the prefiled evidence. The supplemental evidence is timely and relevant.

For the reasons described above, Environmental Stewardship respectfully seeks leave to file supplemental prefiled testimonies and exhibits of George Rice and Joseph Trungale.

Respectfully submitted,

/s/ Marisa Perales

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State Bar No. 24002750

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**CERTIFICATE OF SERVICE**

I certify that a copy of Environmental Stewardship’s Reply to Response to Motion for Leave to Supplement Prefiled Testimony and Exhibits was served on all parties listed below on October 11, 2019.

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# ATTACHMENT A

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**GROUNDWATER MANAGEMENT AREA 12 MEETING**  
**January 29, 2019 – 9:00 am**  
**Post Oak Savannah GCD Offices**  
**310 East Avenue C**  
**Milano, Texas**

**GMA 12 Members Present**

Gary Westbrook	POSGCD
Jim Totten	LPGCD
David Van Dresar	FCGCD
David Bailey	METGCD
Alan Day	BVGCD

**GMA 12 Members Absent**

None

**Others Present**

**Entity**

Elaine Gerren	POSGCD
Bobby Bazan	POSGCD
Doug Box	POSGCD
John Seifert	GCI
Steve Young	Intera
Andy Donnelly	DBS&A
Natalie Ballew	TWDB
James Bene'	RW Harden
James Beach	WSP
Steve Box	Environmental Stewardship
David Coyer	Halff
Erin Atkinson	Halff
Shan Rutherford	Terrill & Waldrop
Bill Riley	Self
Rebecca Batchelder	LCRA
David Wheelock	LCRA
George Rice	Self
Eddie McCarthy	McCarthy & McCarthy
Steven Siebert	SAWS
Darren Thompson	SAWS
Amy Muttoni	BRA

Al Braden	Austin
Mike Thornhill	TGI
Jevon Harding	Intera
Becky Goetsch	POSGCD
Bob Harden	HHE
Meagan Haas	BVGCD
Mike McCloud	
Monique Norman	

## MINUTES

### **1. Invocation**

Invocation was given by David Bailey.

### **2. Call meeting to order and establish quorum**

Gary Westbrook, serving as chair for this meeting, called the meeting to order at 9:03 a.m. and noted that all voting members of GMA 12 were present.

### **3. Welcome and introductions**

Each District voting representative introduced themselves.

### **4. Minutes of October 19, 2018 GMA 12 Meeting**

The minutes of the October 19, 2018 meeting were presented for action. After brief discussion, a motion was made by David Van Dresar to approve the minutes. The motion was 2<sup>nd</sup> by Jim Totten. The motion passed unanimously.

### **5. Review of updated Central Carrizo-Wilcox Groundwater Availability Model (GAM)**

Andy Donnelly of Daniel B Stephens and Associates noted that discussion of the topic of Agenda item 6 would be included in his presentation, and he would cover Agenda item 5, 6, and 13 at this time. Chairman Westbrook noted that these items would be opened and discussed simultaneously. The presentation was entitled, "Summary of the Impacts of the Revised GAM and the Path Forward." During the presentation, Mike McCloud asked about the accuracy of predicted impacts by the new model. This was discussed at length, with explanations of the purpose of the original GAM, and work of the GCDs in GMA 12 working together to improve the GAM. This included evaluations and comparisons between the old and new versions of the GAM. Steve Box asked about the improvements to the groundwater-surface water features of the new model.

### **6. Lost Pines GCD Report on Desired Future Conditions (DFCs) Evaluation Runs of Groundwater Management Area 12 (GMA12)**

This item was covered in Agenda item 5.

### **7. Consider Update of Pumping Files to be used for Joint Planning in GMA12 and Evaluation of Compliance with DFCs and Protective Drawdown Limits (PDLs)**

Chairman Westbrook noted that the title and discussion included Protective Drawdown Limits as currently used by POSGCD in their Rules and Management Plan.

A presentation entitled, "POSGCD Monitoring Update" was then given by Jevon Harding of Intera, with assistance from Bobby Bazan of POSGCD. Ms. Harding then gave another presentation entitled, "POSGCD Update: DFC Compliance," which included a summary of the current POSGCD methodology for measuring water levels and for determining compliance with PDLs and DFCs. Mr. Westbrook noted the similarities between the adopted documents of POSGCD and BVGCD which govern these items in the two districts, and noted that all GCDs in GMA 12 follow the same methodologies for measuring water levels which are consistent with those used by the Texas Water Development Board (TWDB) and the United States Geological Survey (USGS). Mr. Day echoed those thoughts, adding discussion of the similarities of the Rules of the two districts.

Mr. Day noted that this same practice of review for compliance was performed annually by BVGCD, and that all results of monitoring could be found on the District's website. He also noted the winter water level measurements would begin in March.

Both Mr. Bailey of METGCD and Mr. Van Dresar of FCGCD stated that both used the same practice and methodology as discussed by POSGCD and BVGCD, and noted their annual measurements and evaluations would begin soon.

Mr. Totten briefly discussed the LPGCD monitoring efforts, and agreed that LPGCD followed the same methods for measurement of water level as discussed.

Mr. Westbrook thanked the representatives for their updates, and noted this item would remain on future GMA 12 agendas so each GCD could give updates as appropriate to them, and as this practice of discussion of DFCs and compliance is required by statute.

The representatives then discussed use of pumping files in the previous round of joint planning and efforts by each to update and evaluate those pumping files using the new GAM. Mr. Westbrook briefly discussed the recent decisions of the POSGCD Board to proceed in a similar fashion to the last round by updating the pumping files and then considering multiple model runs. Mr. Totten noted that LPGCD would prefer to use the same DFCs as adopted previously, noting the new GAM yielded more water available than the previous version. Mr. Day concurred that BVGCD preferred to begin using the same DFCs for the Wilcox Group and use numbers yielded by the updated GAM for the Carrizo, Sparta, Queen City, and Yegua-Jackson aquifers. This item was discussed at length with the consensus being that each GCD would continue to update their pumping files through 2018, and return that information to their consultant for inclusion in an updated pumping file to be used by the team of consultants for work moving forward, and this updated pumping information needed to be completed in the next 30-60 days.

#### **8. Consider options for expression of DFCs and PDLs**

Mr. Westbrook noted that past discussion at the GMA had included a possible future conversion in the way DFCs are expressed in joint planning. He offered that the POSGCD Board had approved moving forward with expressing DFCs in terms of water levels compared to Mean Sea Level (MSL) instead of water levels as a drawdown compared to previous water levels, as currently used. He provided discussion of the benefits to this approach, which included being able to use monitoring information from wells which were newly added to the POSGCD monitoring network much sooner than the current methods allowed. After discussion and questions about using this approach, it was determined no change would be considered at this time.

Mr. Westbrook also asked if the members desired to consider any other methods by which DFCs for GMA 12 might be expressed in future rounds of joint planning. The possibility of focusing on the shallow parts of the aquifers was discussed, which included discussion of the use of POSGCD's PDLs. Also discussed were methods used by other GMAs, including expression of DFCs as a percentage of saturated thickness. It was agreed no changes would be forthcoming at this time, and to continue these discussions at later GMA 12 meetings as more information was gathered.

Mr. Totten then discussed the adjustments approved by the LPGCD Board to change monitoring and expression of DFCs to a much narrower area than currently defined. Mr. Totten and Mr. Donnelly provided discussion on this new approach, which would be very similar in some respects to the PDLs used at POSGCD.

Mr. Day noted that BVGCD has re-adopted the use of reduction of artesian head averaged across the District as the means by which DFCs will be expressed, and this will be the starting point for this round of planning for BVGCD.

#### **9. Possible Changes in GMA 12 DFCs**

As a result of discussion under the previous agenda item, it was agreed no changes would be considered at this meeting, and that the current process would continue on schedule as outlined earlier in the meeting.

#### **10. Texas Water Development Board Groundwater Availability Model (GAM) Run 17-030 MAG**

A presentation entitled, "Simulated Surface water-Groundwater Interaction for Brazos River Alluvium" was then given by Dr. Steve Young of Intera. Mr. Young discussed the similarities and differences of surface water and groundwater interactions in the newly finished Central Carrizo GAM and the Brazos River Alluvium GAM. Questions of accuracy of pumping data and resulting Modeled Available Groundwater was also discussed. Mr. Steve Box encouraged moving forward with improvements to accuracy so aquifer contributions to rivers during drought might be maintained. Discussion followed concerning the necessary balance between these contributions and respect for the private property rights of landowners who would need that same water for crop production, as well as rule of capture. All agreed to the importance of continuing to improve the information and properly considering this balance.

#### **11. GMA 12 Explanatory Report Organization and Technical Discussion**

Mr. Westbrook provided a brief summary of how the last explanatory report had been organized, with each GCD using their consultant to respond to comments received and questions raised during the process, with all information compiled into one report. Mr. Box stated he desired more feedback from his comments given during this process during the last round of joint planning. This issue was discussed, and resolved, with all agreeing the tool developed by GMA 12 consultants for use by citizens in the GMA to file comment was well thought out and very useful.

#### **12. Approach for Developing GMA 12 Explanatory Report for current round of Joint Planning**

After further discussion of the success of the previous process for developing the Explanatory Report, a motion was made by Mr. Day for the GCDs in GMA 12 to follow the process for the current round of joint planning for development of the Explanatory Report. Mr. Bailey seconded the motion. The motion carried unanimously.

#### **13. Schedule for revision and/or adoption of DFCs for GMA 12 for current round of Joint Planning**

Mr. Westbrook noted that Mr. Donnelly had covered this item in agenda item 5, and asked if anyone would like to revisit the draft schedule at this time. No one asked to return to the item.

**14. Update from Groundwater Conservation Districts (GCDs) of GMA 12 on joint planning and compliance with Chapter 36.108, State Water Code**

Mr. Westbrook noted this item would be a mainstay on GMA 12 agendas so that updates could be given and discussed at necessary and appropriate. He then noted that this topic had been addressed earlier in the meeting during agenda item 7, and asked if any of the GCDs had any further discussion to offer at this time. No further discussion was offered.

**15. Discussion on possible common website for GMA 12 to house all information and data**

Mr. Day gave a brief summary of past discussions on this topic and invited Erin Atkinson with Half, Inc. to provide discussion on this topic. All agreed there could be great value in creating and maintaining a single website to house all vital documents and records of GMA 12 as well as a single map providing water level measurements and additional science based information. After questions and discussion with Mr. Atkinson, it was agreed Mr. Atkinson would return to the next GMA 12 meeting with a scope of work, product description, and cost estimate to meet the needs of the GMA for this purpose.

**16. Representation for GMA 12 to Region H Water Planning Group**

Mr. Bailey explained the alternate for this position had retired from his Board and the METGCD Board had nominated Board member Jim Nash to fill this vacancy. Mr. Bailey further noted METGCD was the only GMA 12 GCD in Region H. A motion was then made by Mr. Bailey to nominate Mr. Nash for this position. The motion was seconded by Mr. Day. The motion passed unanimously.

**17. Public Comment**

Mr. Westbrook invited public comment from all in attendance. No Public Comment was offered. He then thanked all in attendance for their participation in the meeting, recognizing their cooperation and the orderly and considerate manner in which questions were asked and discussion had taken place on agenda items as the meeting progressed. He noted this participation had included no fewer than 8 of the public in attendance this day.

**18. Agenda items and Date for next meeting**

After discussion, it was agreed the next meeting of GMA 12 would be held May 14, with time and agenda items to be determined at a later date.

**19. Adjourn**

The meeting was adjourned at 12:24 pm.

**THE ABOVE MINUTES OF THE MEETING OF GROUNDWATER MANAGEMENT AREA 12 HELD ON JANUARY 29, 2019, WERE APPROVED AND ADOPTED BY GMA 12 ON \_\_\_\_\_, 2019.**

ATTEST:

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Mid-East Texas Groundwater Conservation District

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Fayette County Groundwater Conservation District

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Brazos Valley Groundwater Conservation District

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Lost Pines Groundwater Conservation District

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Post Oak Savannah Groundwater Conservation District



# ATTACHMENT B

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**GROUNDWATER MANAGEMENT AREA 12 MEETING**  
**May 30, 2019 – 10:00 am**  
**Post Oak Savannah GCD Offices**  
**310 East Avenue C**  
**Milano, Texas**

**GMA 12 Members Present**

Gary Westbrook	POSGCD
Jim Totten	LPGCD
David Van Dresar	FCGCD
David Bailey	METGCD
Alan Day	BVGCD

**GMA 12 Members Absent**

None

**Others Present**

**Entity**

Elaine Gerren	POSGCD	Becky Goetsch	POSGCD
Pat Reilly	Blue Water	David Teuscher	Self
Jennifer Nations	City of College Station		
Bobby Bazan	POSGCD		
Doug Box	POSGCD		
Ralph Sifuentes	POSGCD		
John Seifert	WSP		
Steve Young	Intera		
Andy Donnelly	DBS&A		
Natalie Ballew	TWDB		
James Bene'	RW Harden		
Steve Box	Environmental Stewardship		
Shan Rutherford	Terrill & Waldrop		
Rebecca Botchelder	LCRA		
George Rice	Environmental Stewardship		
Larry Rose	Self		
Nathan Ausley	Self		
Sheril Smith	LPGCD		
Bob Wilson	POSGCD		
Sidney Youngblood	POSGCD		
Shirley Wade	TWDB		

MINUTES

## **1. Invocation**

The invocation was given by David Bailey. Doug Box lead the pledges to the flags of the United States and Texas.

## **2. Call meeting to order and establish quorum**

Gary Westbrook, serving as chair for this meeting, called the meeting to order at 10:00 a.m. and noted that all voting members of GMA 12 were present.

## **3. Welcome and introductions**

Each of the five District voting representatives introduced themselves.

## **4. Minutes of January 29, 2019 GMA 12 Meeting**

The minutes of the January 29, 2019 meeting were presented. After brief discussion, a motion was made by David Van Dresar to approve the minutes. The motion was 2<sup>nd</sup> by Jim Totten. The motion passed unanimously.

## **5. Update from Groundwater Conservation Districts (GCDs) of GMA 12 on joint planning, water level monitoring, and compliance with Chapter 36.108, State Water Code**

Mr. Westbrook invited Bobby Bazan to give a monitoring report on behalf of POSGCD. Mr. Bazan reported the District now had 215 total monitoring wells and had confirmed 187 water level measurements for the annual monitoring efforts. He reported 33 of these were equipped with continuous measurement devices, and further noted there were quite a few wells which were not yet accessible due to the amount of rainfall this Spring. Mr. Day reported that BVGCD had measured water levels in 158 wells this Spring, and handed out a report which is provided monthly to their Board which includes the amounts of water permitted and pumped in each aquifer, as well as an electronic copy of the newly adopted BVGCD Management Plan. He also noted since December the District had issued approximately 27,000 acre feet of water from the Simsboro aquifer. Mr. VanDresar announced FCGCD has completed 66% of Spring measurements, and the District was adding continuous measurement equipment in unused wells. Mr. Bailey noted METGCD was using both measurements obtained by himself and from the Texas Water Development Board, and had completed Spring measurements. H also noted the desire for his district to add additional wells to their monitoring network in the Sparta and Hooper. Mr. Totten stated LPGCD was working with WellIntel to transfer data and service from their current wells to a new format and system. Mr. Westbrook, Mr. Day, and Mr. Bailey discussed recent meetings with the Texas Commission on Environmental Quality (TCEQ) and Luminant regarding the recent report from Environmental Integrity on deposits of coal ash and possible contamination of groundwater near those deposits at coal burning plants in Texas.

## **6. Texas Water Development Board Groundwater Availability Model (GAM) Run 17-030 MAG and TWDB determination of MAG for Brazos River Alluvium**

Mr. Westbrook reminded all in attendance of the information on this item as presented and discussed at the January 29 GMA 12 meeting. Steve Young of Intera then presented a report entitled Review of DFCs and MAGs- Brazos River Alluvium. Mr. Young raised concerns about the volume of water listed as MAG, and noted meetings with staff from the Texas Water Development Board (TWDB) to resolve these concerns. He reported TWDB staff was agreeable to consultants representing GCDs in GMA 12 providing methodology to run the GAM during this current round of planning. John Seifert agreed with concerns raised by Mr. Young and method for resolution moving forward into this round of planning. Steve Box referenced the LCRA study and asked about similarity. Alan Day referenced and discussed a recent study published by Baylor University concerning migration of surface water into the alluvial formations, and noted that study was posted on the BVGCD website. After discussion, Dr. Young and

Mr. Seifert agreed to continue discussions with TWDB staff and return recommendations to the POSGCD and BVGCD Boards. No further action was taken.

**7. Development of two future pumping scenarios using the Sparta/Queen City/Carrizo-Wilcox GAM and results of the predicted water levels**

Mr. Seifert reviewed pumping scenarios of the last round of planning. Pumping for the last round was updated through 2010, and for this round could be updated through 2017 or 2018. Mr. Day submitted a report on amounts of permits and production presented to the BVGCD Board. Dr. Young presented a report entitled "POSGCD" Reported Pumping and Operating Permits." James Bene and George Rice asked when updated pumping files for GMA 12 could be obtained. Mr. Westbrook stated as soon as they were completed and became public they would be available to the public. Mr. Day asked about how the new GAM accounted for droughts. Dr. Young explained. Andy Donnelly reported on updated pumping files for FCGCD and LPGCD, and noted that these files made assumptions on ramped up pumping for the future but these did not consider DFCs. David Bailey noted METGCD pumping file had been updated also, but their consultant was not able to be in attendance at this meeting.

After discussion, Mr. Day moved to use pumping **updated through 2018**. Mr. VanDresar seconded. The motion passed unanimously.

Discussion ensued on which year to use for calibration. Jim Totten moved to **use 2010 for the year of calibration**. Mr. Bailey seconded. The motion passed unanimously.

Mr. Totten asked if the consultants would verify production in neighboring GCDs outside of the GMA. Mr. Donnelly confirmed this would be accomplished.

Mr. Day asked to discuss possible GAM runs to consider moving forward in this round of planning.

After discussion, Mr. Totten moved and Mr. Day seconded, to run two GAM scenarios, both with the variation of adding a drought of record period in the 2030 decade. The first run would include total permitted amounts produced each year beginning in 2020 through the end of the period, and the second would include estimated ramped up production. Mr. Westbrook asked for discussion. It was noted this would actually yield four separate GAM runs for consideration. After further discussion, Mr. Westbrook moved to amend the motion by adding an additional basic GAM run, also to include a variation of including the drought of record in the 2030 decade, with modeled production at 50% of the ramped up GAM run. Mr. Day seconded the motion to amend. It was agreed this would yield two additional GAM runs to be considered, for **a total of six GMA runs** to be considered. After discussion, the motion to amend passed. Mr. Westbrook then called for discussion on the amended motion. After brief discussion, Mr. Westbrook called for the vote on the amended motion. The motion passed unanimously.

Mr. Westbrook then asked for further instruction to the consultants. After discussion, Mr. Totten moved, and Mr. Van Dresar seconded, to have the consultants produce and return **full water budgets** and effects of drawdown on aquifer conditions, expressed by county, district, and GMA. After brief discussion, the motion passed unanimously.

**8. Update and possible action on legislation that relates to the joint planning process including but not limited to similar rules**

Mr. Westbrook then addressed recent legislation which had been filed in this legislative session. After discussion, no action was taken.

**9. Public Comment**

Mr. Westbrook invited comment from the public. No comment was offered. All agreed this was a result of the public being allowed to participate with questions and comment on agenda items as the meeting progressed.

**10. Review of Agenda items and Date for next meeting**

After discussion, it was agreed the consultants should be able to accomplish their work by late July, and as they neared completion of this work the GMA members would determine a meeting date and agenda items.

**11. Adjourn**

The meeting was adjourned at 12:32 pm.

**THE ABOVE MINUTES OF THE MEETING OF GROUNDWATER MANAGEMENT AREA 12 HELD ON MAY 30, 2019, WERE APPROVED AND ADOPTED BY GMA 12 ON \_\_\_\_\_, 2019.**

ATTEST:

\_\_\_\_\_  
Mid-East Texas Groundwater Conservation District

\_\_\_\_\_  
Fayette County Groundwater Conservation District

\_\_\_\_\_  
Brazos Valley Groundwater Conservation District

\_\_\_\_\_  
Lost Pines Groundwater Conservation District

\_\_\_\_\_  
Post Oak Savannah Groundwater Conservation District

# ATTACHMENT C

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**GROUNDWATER MANAGEMENT AREA 12 MEETING**  
**August 2, 2019 – 10:00 am**  
**Post Oak Savannah GCD Offices**  
**310 East Avenue C**  
**Milano, Texas**

**GMA 12 Members Present**

Gary Westbrook	POSGCD
Jim Totten	LPGCD
David Van Dresar	FCGCD
David Bailey	METGCD
Alan Day	BVGCD

**GMA 12 Members Absent**

None

**Others Present**

	<b>Entity</b>
Elaine Gerren	POSGCD
Bobby Bazan	POSGCD
Doug Box	POSGCD
John Seifert	WSP
Jevon Harding	Intera
James Bene'	RW Harden
Rebecca Batchelder	Lower Colorado River Authority (LCRA)
George Rice	Environmental Stewardship
Sidney Youngblood	POSGCD
Aaron Abel	Brazos River Authority (BRA)
James Beach	WSP
Paul Kirby	DBSA
Amy Muttoni	BRA
Robert Bradley	TWDB
Blaire Parker	SAWS
Andy	LPGCD
Matt Uliana	Intera / METGCD
Bill Riley	Self

## MINUTES

### **1. Invocation**

The invocation was given by David Van Dresar.

### **2. Pledge of Allegiance**

Alan Day lead the pledges to the flags of the United States and Texas.

### **3. Call meeting to order and establish quorum**

Gary Westbrook, serving as chair for this meeting, called the meeting to order at 10:05 a.m. and noted that all voting members of GMA 12 were present.

### **4. Welcome and introductions**

Each of the five District voting representatives introduced themselves.

### **5. Public Comment on Agenda Items**

Mr. Westbrook invited public comment on agenda items. There was no public comment offered on the Agenda Items.

### **6. Minutes of May 30, 2019 GMA 12 Meeting**

The minutes of the May 30, 2019 meeting were presented. After brief discussion, a motion was made by Alan Day to approve the minutes. The motion was 2<sup>nd</sup> by David Van Dresar. The motion passed unanimously.

### **7. Status Update on Texas Water Development Board Study on Groundwater-Surface Water interaction**

Rebecca Batchelder of the LCRA gave a brief summary of the study and introduced James Bene' with R.W. Hardin, and Assoc. as the consultant in charge of the study. Mr. Bene' presented a slideshow on the Study including the purpose of the Study, GAM Limitations, Study Goals, Study Area, and he discussed Test Site # 1, which had proved unsuitable. He stated that they are currently looking for other test sites. A question was asked by George Rice wanting to know how many sites had been selected. Mr. Bene indicated that was ongoing work. James Beach commented on how to discern between the sites. No action was taken.

### **8. Update from Groundwater Conservation Districts (GCDs) of GMA 12 on joint planning, water level monitoring, and compliance with Chapter 36.108, State Water Code**

Mr. Westbrook stated that the Post Oak Savannah GCD will review the annual evaluations on DFC and PDL compliance at the next DFC Committee and Board Meeting, both on August 6, 2019. Alan Day stated that the Brazos Valley GCD will start their Summer measurements the 3<sup>rd</sup> week in August. David Bailey with the Mid-East Texas GCD stated METGCD had completed measurements in April. Jim Totten of the Lost Pines GCD stated LPGCD is converting to Wellntel for these purposes. David Van Dresar noted that Fayette County GCD was continuing current monitoring practices. No action was taken.



**9. Discussion of comments received from stakeholders**

A letter of June 25, 2019 from Environmental Stewardship was presented for discussion. Mr. Seifert gave a brief and overview of the request, and reported on how the request was being considered in ongoing GMA 12 work. No further action was taken.

**10. Evaluation and discussion of future pumping scenarios using the Sparta/Queen City/Carrizo Wilcox GAM and results including predicted water levels and water budgets**

Mr. Seifert presented a slideshow on the preliminary Modeling results for the Sparta, Queen City, and Carrizo Wilcox Aquifers. Mr. Seifert reminded all that in previous GMA 12 meetings it had been indicated that the GCDs desired to maintain DFCs consistent with the currently adopted DFCs. Mr. Westbrook commented that the pumping files were preliminary and some would need to be updated. Mr. Seifert agreed, and then noted the three different model runs as outlined by GMA 12 at the previous meeting, and discussed each as runs named S1, S2, and S3. He then reminded the GMA had instructed the addition of two periods of drought, which had been added to each of these GAM runs by adding the periods during 2026-2030 and 2051-2060. He then noted the three GAM runs which included the additional drought periods as S4-S6, respectively. He also noted nearly identical results for GAM runs with and without the drought periods included.

Discussion of the three primary GAM runs ensued. Mr. Westbrook noted necessary adjustments to POSGCD pumping files and estimated ramp-up times. Mr. Seifert noted a next run could be selected from the first three and returned with updated pumping information, and which could then be considered at the next meeting. He also noted this run could be considered as GAM Run S4. Mr. Totten asked when this run would be completed and available for consideration. Mr. Seifert was unsure, but estimated maybe 2-3 months. George Rice asked when the pumping files for the next GAM run will be available. Mr. Seifert estimated 2-3 weeks after the updates were made to the files. Mr. Rice asked if the pumping shown included all proposed projects? Mr. Seifert stated, yes the total in the Simsboro went from 37,000 to 130,000 acre feet per year in Lost Pines GCD. James Bene' asked who to contact for these new files. John Seifert replied himself or Andy Donnelly will have the files. After discussion, a motion was made by David Van Dresar for each District to make adjustments to their pumping files in GAM Run S2 and the consultants perform a new run as S4 and return for consideration by early October. The motion was 2<sup>nd</sup> by Alan Day. Mr. Westbrook asked for discussion. None was offered. The motion carried unanimously.

**11. Discussion on expressions of Desired Future Conditions (DFC's) and compatibility between GCD's in GMA 12**

Mr. Westbrook noted several differences in expression of DFCs among the GCDs in the GMA, most specifically POSGCD's conversion from water levels as expressed as drawdown compared to previous water levels, to water level expressed in comparison to mean sea level (MSL), as well as POSGCD's use of restrictions on water level change in the shallow parts of the District's aquifers. All agreed this would need to be considered as this work progressed.

**12. Public Comment on non-agenda items**

Mr. Westbrook invited comment from the public. Robert Bradley requested that an agenda item be included in the future for updates from the Texas Water Development Board (TWDB). He further noted there may be more rigorous GCD Management Plan reviews which may require additional information even when plans are considered administratively complete. He also updated all on recent legislative activities and the increases in the budget and staffing of TWDB related to scientific work.

**13. Agenda items and Date for next meeting**

The GMA will consider the next GAM Run S4 as returned by the consultants as well as any additional items as appropriate at that time, and an update from TWDB as requested. Date to be determined.

**14. Adjourn**

The meeting was adjourned at 11:49 pm.

**THE ABOVE MINUTES OF THE MEETING OF GROUNDWATER MANAGEMENT AREA 12 HELD ON AUGUST 2, 2019, WERE APPROVED AND ADOPTED BY GMA 12 ON \_\_\_\_\_, 2019.**

ATTEST:

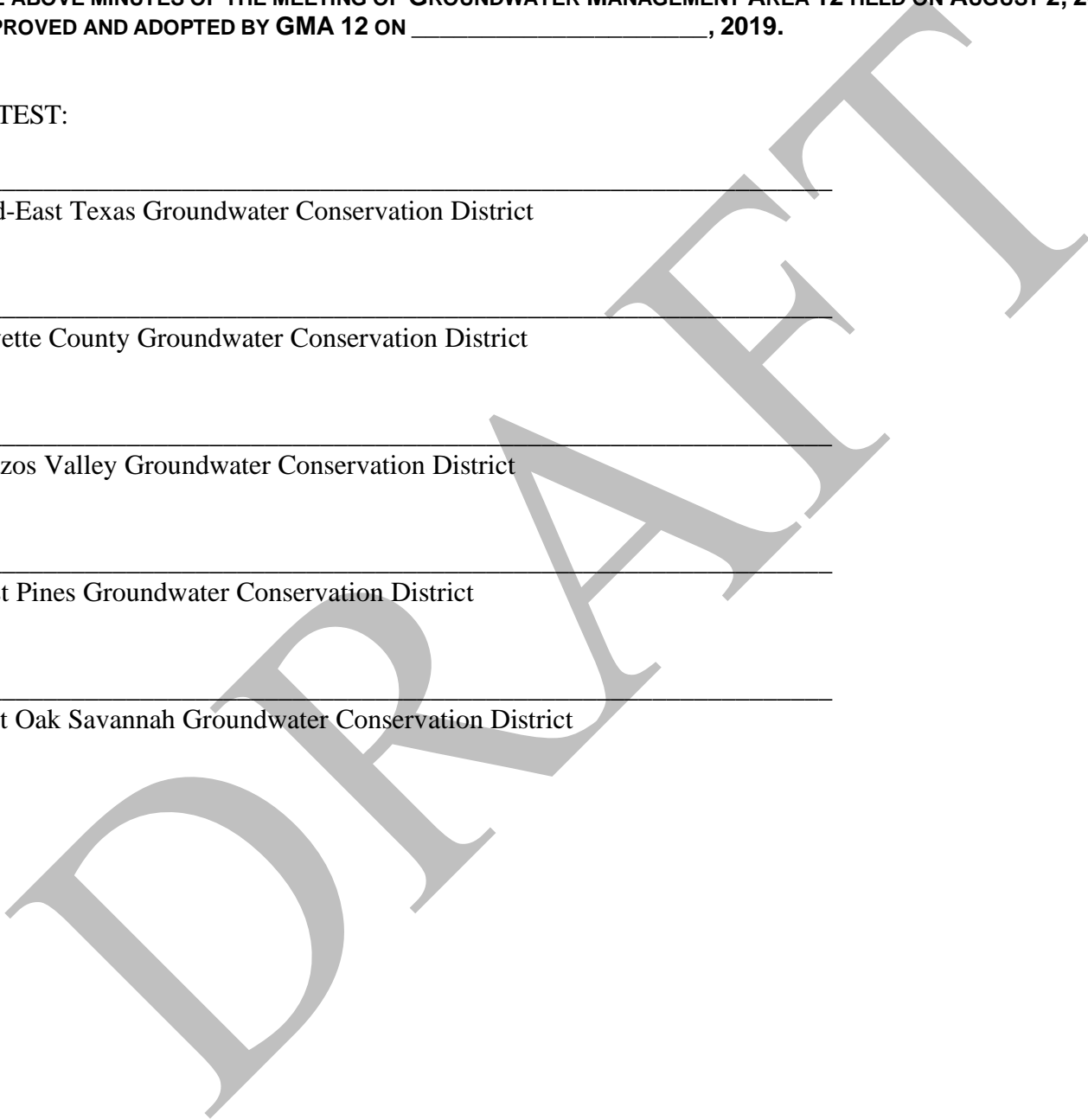
\_\_\_\_\_  
Mid-East Texas Groundwater Conservation District

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Fayette County Groundwater Conservation District

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Brazos Valley Groundwater Conservation District

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Lost Pines Groundwater Conservation District

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Post Oak Savannah Groundwater Conservation District



# ATTACHMENT D

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**NOTICE OF MEETING**  
**GROUNDWATER MANAGEMENT AREA 12**  
**September 24, 2019 – 10:00 a.m.**  
**Post Oak Savannah GCD Offices**  
**310 East Ave. C (Highway 79)**  
**Milano, Texas**

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**AGENDA**

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Notice is hereby given that the groundwater conservation districts located wholly or partially within Groundwater Management Area (GMA) 12, as designated by the Texas Water Development Board, consisting of the Post Oak Savannah Groundwater Conservation District (GCD), Fayette County GCD, Lost Pines GCD, Mid-East Texas GCD, and Brazos Valley GCD, will hold a ***Joint Planning meeting at 10:00 a.m. on Tuesday, September 24, 2019***, in the Post Oak Savannah GCD Offices, located at 310 East Ave. C (Highway 79), Milano, Texas. The meeting will be open to the public.

**The subjects to be discussed or considered, or upon which any formal action may be taken, are as listed below. Items may or may not be taken in the same order as shown on this meeting notice.**

1. Invocation
2. Pledge of Allegiance
3. Call meeting to order and establish quorum
4. Welcome and introductions
5. Public Comment on Agenda Items
6. Minutes of August 2, 2019 Groundwater Management Area 12 (GMA12) Meeting
7. Update from Groundwater Conservation Districts (GCDs) of GMA 12 on joint planning, water level monitoring, and compliance with Chapter 36.108, State Water Code
8. Discussion of efforts of GCDs of GMA 12 in use of Groundwater Availability Modeling and Best Available Science in consideration and adoption of Desired Future Conditions (DFCs) and management of shared aquifers
9. Discussion on expressions of Desired Future Conditions (DFCs) and compatibility between GCDs in GMA 12
10. Discussion of comments received from stakeholders
11. Declare the Gulf Coast Aquifer non-relevant as it applies to groundwater management in the Brazos Valley GCD
12. Discussion and instruction to consultants concerning Joint Planning in GMA 12 for the Yegua-Jackson Aquifer
13. Discussion and instruction to consultants concerning Joint Planning in GMA 12 for the Brazos River Alluvium Aquifer
14. Evaluation and discussion of future pumping scenarios using the Sparta/Queen City/Carrizo-Wilcox GAM and results, including predicted water levels and water budgets
15. Public Comment on non-agenda items
16. Agenda items and Date for next meeting
17. Adjourn

Signed this 5th day of September, 2019.



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Gary Westbrook, General Manager, POSGCD  
310 East Avenue C, Milano, Texas 76556  
Phone: 512-455-9900

***\*\*Questions, requests for additional information, or comments concerning the subjects listed above may be submitted to the person posting this notice.***

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# ATTACHMENT E



Katie Apls &lt;katieaplis@lf-lawfirm.com&gt;

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**Release of S7 Pumping File**

1 message

**Steve Box** <steve.box@att.net>

Tue, Sep 24, 2019 at 4:31 PM

To: Gary Westbrook &lt;gwestbrook@posgcd.org&gt;

Cc: George Rice &lt;jorje44@yahoo.com&gt;

Gary,

As per your request after the Motion passed today, Environmental Stewardship request that GMA-12 immediately provide the S7 pumping file to George Rice for his use in evaluating the the New GAM and the outputs from the GAM. Would you please make such arrangements as are necessary so that George can receive the file tomorrow, Wednesday September 25th.

Thanks you

Steve Box

Board President &amp; Executive Director

**Environmental Stewardship,****a WATERKEEPER® ALLIANCE Affiliate**

512-300-6609 cell

<http://www.environmental-stewardship.org>**PROTECTING THE NATURAL RESOURCES OF THE LOST PINES AND TEXAS GULF COAST**