

## II. MANAGEMENT POLICIES AND PRACTICES: THE ROLE OF NON-EXEMPT PUMPING IN DEVELOPMENT OF DESIRED FUTURE CONDITIONS

Management policies and practices are in a state of flux in Groundwater Management Area 12. Joint planning among districts is supposed to help all of the districts manage the development of the aquifers in a way that balances pumping against the conservation and protection of aquifers, while retaining their ability to curtail (slow down pumping) when the damage is imminent. However, the standards for developing desired future conditions in GMA-12 are changing, yet there is no agreement between the District Representatives on the changes. As a result, the representatives from four of the districts have imposed their will on the fifth district rather than reaching a workable and agreeable resolution of the issues involved. Certainly, this does not help all of the districts achieve the joint planning objectives.

An important policy discussion took place at the March 18 meeting of the GMA-12 District Representatives leading to a 4-1 vote on the new Proposed DFCs. The representatives took up a discussion of the controversial GAM Run S-12 and whether to use it as the base run for the proposed DFCs. Much of the controversy over the appropriate pumping file to be used was sparked by a November 10, 2020, threatening letter from Paul M. Terrill III<sup>1</sup> to Gary Westbrook regarding Blue Water Vista Ridge Desired Future Conditions.

After discussion they voted to use the S-12 model that was favored by 4 of the 5 District Representative. Post Oak GCD, the District that received the letter, voted against the S-12 pumping file. Though the subject had been discussed during several of the previous meetings, below is a summary of the 33 minute discussion during the March 18, 2021, meeting. And here is a [link to a video](#) of the discussion so you can hear it "live" if you prefer; jump to time 8:20 in the video.

In his plea to maintain Post Oak's manage policy, Mr. Westbrook, told the other District Representatives, **“This is management we have had in place for over a decade that we believe tracks our mission statement considering conservation is important while recognizing that property rights are important.**

We also recognize the balance that is required in considering the property rights of those who wish to produce as well as the property rights of those who wish to conserve for the future. We are very very adamant about our belief that when we are required, at the GMA level, to consider all nine factors, that we believe our approach does give more consideration to conservation than just putting everything in a pumping file and rolling forward.

**We respectfully request that you allow us to manage the Carrizo as we have always desired. Once we set the precedent, and I believe this would be a precedent, it will be hard to undo. If our DFC is raised so much higher, then really, we won't be able to do any**

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<sup>1</sup> Terrill III, Paul M., November 10, 2020 to Gary Westbrook, General Manager, Post Oak Savannah GCD re: Blue Water Vista Ridge – Desired Future Conditions. [https://www.environmental-stewardship.org/wp-content/uploads/2021/04/JamesBeneBluewaterComments\\_2020-11-10-BWVR-to-POSGCD-re-DFCs.pdf](https://www.environmental-stewardship.org/wp-content/uploads/2021/04/JamesBeneBluewaterComments_2020-11-10-BWVR-to-POSGCD-re-DFCs.pdf)

**management. You can't curtail until you approach those desired future conditions because these [new] DFCs would have to be allowed.**

By law you can't go past them, but you have to allow them. And so that is the whole point to the challenge of this pumping file issue, is that once we determine that this is the file that is going to be used, then **the [new] number that comes back is 178 ft of drawdown. And so now, another 100 wells have to be mitigated. So that is another social-economic impact to landowners, and that is the balance we are trying to achieve, but we can't achieve it if you force us into that 18,000 acre-feet per year [S-12] pumping file. The last round [desired future condition] was not 18,000 acre-feet per year in the Carrizo but was a much smaller number [7,000 acre-feet per year per Steve Young.]**

Environmental Stewardship has verified, through direct observation of the values in the pumping file associated with the currently adopted DFCs, that Post Oak Savannah's pumping from the Carrizo Aquifer was as listed in the following table.

<b>Pumping from the Carrizo Aquifer (AFY) Post Oak Savannah GCD</b>		
<b>Year</b>	<b>DFCRun3</b>	<b>S-12</b>
2020	4706	11,191
2040	6119	17,459
2070	7060	18,158

Per George Rice, 4/12/2021

In the vote that followed the above discussion, the four districts that were concerned about being drawn into a lawsuit if Blue Water sued Post Oak, forced their will on Post Oak Savannah GCD. In doing so, they essentially eliminated Post Oak's ability to curtail the Vista Ridge project even though, after only about six months of pumping at the higher withdrawal rate, dozens of landowner's domestic wells in Burlson and Lee Counties are being damaged, costing 10's of thousands of dollars to repair.

**Worse, the damage to the aquifers in these counties continues, and will continue, for many decades unless the Proposed DFCs are rejected and revised.**

When domestic wells are being impacted in this manner, the aquifers that supply water to these wells are likewise being impacted. Likewise, the negative impact of this current pumping, along with proposed permitted pumping, stems from the same hydrological conditions that impact outflows of groundwater to surface waters such as the Colorado and Brazos rivers. As such, it is incumbent on the districts to protect these resources by taking adaptive management actions to remedy this situation rather than to approve double the amount of pumping without understanding the nature of the fundamental problems that exist.

The over-arching concern is the unresolved management policies that have rapidly evolved within the jurisdiction of the five groundwater conservation districts, over the last 9 months. These policies, reflected in the Proposed DFCs, will have serious immediate and future consequences on management policies within the joint-planning process. Most urgently, the impact of changes in management policies that have a direct negative impact on the ability of Districts to manage curtailment of pumping when the DFCs are exceeded need to be resolved and agreed policies adopted before future DFCs are adopted. As such it is imperative that the Proposed S-12 DFCs are rejected and sent back to the GMA for revisions.

Since much of what drove the decision and decision to force Post Oak GCD to use the S-12 GAM run was the threats of litigation, Environmental Stewardship requested that its legal counselor, Eric Allmon, prepare a letter on the role of non-exempt pumping in the development of desired future conditions. The main point of the letter is to address the issue of the threats of litigation that seem to be driving the position by some that the DFCs must include 100% of all permitted pumping in order to avoid litigation. Mr. Allmon lays out the legal framework and court findings that support the position that the DFCs must *balance* conservation and protection of the aquifers and the 9 factors required to be considered against development in order to sustain the DFCs against litigation by water marketers and others.

We encourage you to read Mr. Allmon's [letter](#)<sup>2</sup> and take it to heart as you deliberate on the adoption of DFCs. This brief was provided to all of the GMA-12 District Representatives and their respective Board of Directors on June 3, 2021.

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<sup>2</sup> Allmon, Eric, Perales, Allmon & Ice, P.C. June 3, 2021. Initially addressed to Sidney Youngblood, President, Post Oak Savannah GCD, and provided to all District Boards by email from Elena M. Solimano, on the same date. <https://www.environmental-stewardship.org/wp-content/uploads/2021/05/2021.06.03-ES-DFC-Letter.pdf>