

The State Mandates that Groundwater Conservation Districts
Must Establish Desired Future Conditions for Aquifers

“DESIRED FUTURE CONDITION” AND “MODELED AVAILABLE GROUNDWATER”:

The Desired Future Condition (DFC) and Modeled Available Groundwater (MAG) are parameters legislated by the State to ensure that groundwater conservation districts work together when managing a common aquifer.

Chapter 36 of the Texas Water Code defines these two parameters as:

- "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times [*usually 50-60 years in the future*]. [36.001(30)]
- "Modeled available groundwater" means the amount of water that the [TWDB] executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108. [36.001(25)]

In essence, a groundwater district determines the DFC for an aquifer and the Texas Water Development Board (TWDB) uses the DFC to determine how much groundwater can be pumped to achieve the DFC (that quantity is called the MAG).

THE IMPORTANCE OF DFCs IS EMPHASIZED BY STATE LAW AND GMA 12:

Silent testimony for the importance that the State places on DFCs is the 3,000 words dedicated to the discussion of DFCs in Chapter 36 of the Texas Water Code.

Section 36.1132 of the Texas Water Code specifically dictates that groundwater districts should NOT permit more pumping than the amount that will achieve the DFCs: “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.” The amount of pumping that will achieve the DFC is defined as the MAG.

In addition, GMA 12 (the Groundwater Management Area encompassing my ranch) affirmed the importance of DFCs in their 2017 *DFC Explanatory Report* (<https://posgcd.org/wp-content/uploads/2015/01/GMA-12-Explanatory-Report.pdf>) by stating: “DFCs are essentially planning goals that could be reached, *but should not be exceeded.*”

GREAT AMOUNTS OF TIME AND MONIES SPENT ADOPTING DFCs:

Considerable time and monies are expended for the adoption of DFCs every five years as revealed by the *DFC Explanatory Reports* prepared by each GMA and submitted to the TWDB.

For example, groundwater district general managers and staff, hydrologists, attorneys, and TWDB staff meet for many hours over a period of years to develop the DFCs. Extensive reports are prepared. Computer models are used and/or developed continuously at great expense.

**THE GROUNDWATER SITUATION IN MILAM COUNTY WHICH PROMPTED ME TO
LOOK FOR HELP FROM THE STATE**

The groundwater district charged with protecting the aquifers under Milam and Burleson Counties – the Post Oak Savannah Groundwater District (POSGCD) – appears to consider DFCs and MAGs as irrelevant.

Although I could provide many examples of POSGCD's disregard of DFCs and MAGs, I decided to use data produced by POSGCD itself.

TABLE 1:

Table 1 was published in the *DFC Explanatory Report for GMA 12* dated **September 2017**. The data confirm that POSGCD had granted 190,031 acre-feet/year of pumping permits while 2010 MAG was 81,994 acre-feet/year. **In simple terms, by 2017 POSGCD had approved pumping permits equal to 231% of the MAG.** The effects of this extreme overpermitting are displayed in Figure 1.

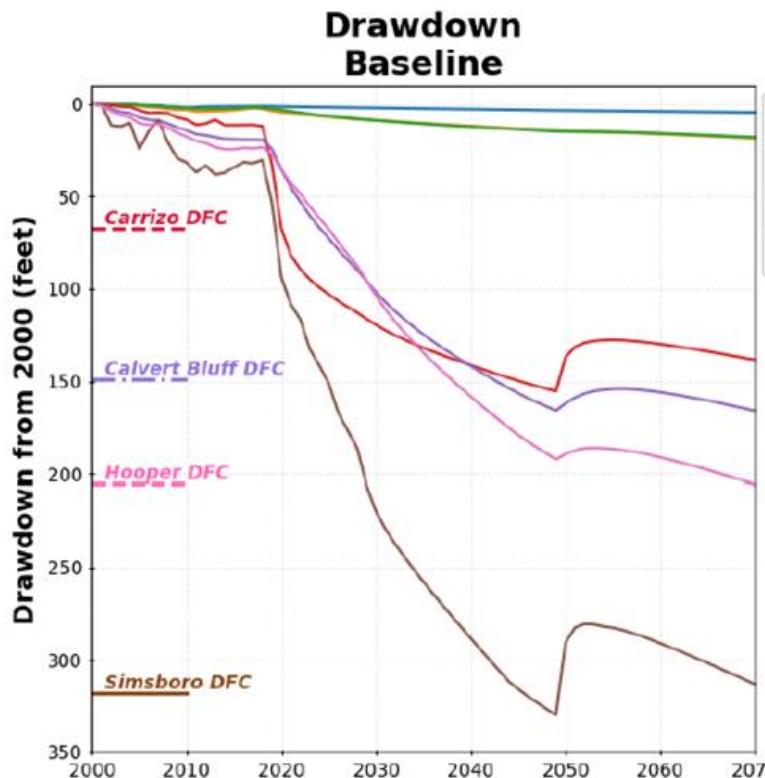
	Groundwater Conservation District					
	Brazos Valley GCD	Fayette County GCD	Lost Pines GCD	Mid-East Texas GCD	Post Oak Savannah GCD	All GCDs
2010 MAG (AF)	90,889	10,656	42,845	28,088	81,994	254,472
Existing Permits (AF)	137,711	12,222	61,710	18,014	190,031	419,688

FIGURE 1:

Figure 1 was prepared by POSGCD hydrologist Steve Young in August 2019. It displays predicted significant effects of the Vista Ridge Project on water level drawdowns for the Carrizo, Simsboro, Calvert Bluff, and Hooper Aquifers. The sharp downward turn for the drawdowns correlates with the date that the Vista Ridge Project begins to export 50,000 acre-feet/year of Carrizo and Simsboro groundwater to San Antonio in 2020. This jarring effect results from the fact that POSGCD has permitted the entire MAG volumes for the Carrizo and Simsboro to the Vista Ridge Project

When compared to the current DFCs identified on the left-hand ordinate, the predicted Carrizo drawdown exceeds its DFC THIS YEAR – while the Simsboro and Calvert predicted drawdowns exceed their DFCs by 2045.

These predicted drawdowns are stunning since the DFCs are not supposed to be reached until 2069. The POSGCD directors never mention this as a problem even though POSGCD is responsible for the situation we find ourselves by their uncontrolled overpermitting – POSGCD has an “approve all permits” policy.



But more problematical for Central Texas rural counties is that POSGCD will be unable to reduce the Vista Ridge pumping and the resultant DFC violations. The Vista Ridge Project’s survival depends on their ability to deliver 50,000 acre-feet/year of groundwater to San Antonio under any circumstance. Their plan to achieve this goal requires the full cooperation of POSGCD. If certain drawdown thresholds are reached, POSGCD will require a cutback but not in the “amount pumped” but rather in the “permitted volume.” This important distinction will allow Vista Ridge to apply for new pumping permits to compensate for any cutback which will be approved by POSGCD in alignment with their “approve all permits” policy. The end result is that the overpumping will continue while the drawdowns continue to dramatically exceed the DFCs.

You may be saying to yourself that the above scenario is fiction – but it is not. In fact, the scenario described above was highlighted in the Vista Ridge Consortium’s proposal to the San Antonio Water System (SAWS) in 2011. Additional evidence that this is Vista Ridge’s plan is that Section 5 of the Groundwater Supply Agreement of the Vista Ridge Regional Supply Project requires 50,000 acres of groundwater leases in the Groundwater Area to be ‘held and maintained’ although only 25,000 acres are needed to produce 50,000 acre-feet/year of groundwater. These additional groundwater

leases will be implemented when new pumping permit requests are submitted to POSGCD in response to any cutbacks.

**THE STATE HAS NO AUTHORITY TO PREVENT
GROUNDWATER CONSERVATION DISTRICTS
FROM EXCEEDING DESIRED FUTURE CONDITIONS –
INSTEAD THE STATE EXPECTS CITIZENS TO BE THE ENFORCERS**

The extreme overpermitting of our aquifers indicates to me that POSGCD considers DFCs and MAGs as *irrelevant*. I and many other landowners in Milam and Burleson Counties consider the enforcement of DFCs as the ONLY way we have to ensure our groundwater supply for the future. In fact, in 2018 a coalition of landowners submitted a new set of Rules that would protect our groundwater – we spent 300 hours preparing the Rules but POSGCD discarded all of our ideas without one question. POSGCD also considers citizens' concerns as *irrelevant* – they consider our concerns irrelevant since the directors are appointed not elected.

As my concern about the overpermitting increased and the stonewalling from POSGCD continued, I searched Chapter 36 of the Texas Water Code and various chapters of the Texas Administrative Code in an attempt to identify who I could request help in preventing GCDs from exceeding DFCs and MAGs. **I did not find any state agency that could enforce adherence to the DFCs and MAGs.**

So, I decided to contact the Texas Commission on Environmental Quality because I consider them as the State's enforcement arm for groundwater issues. *The email correspondence is below.*

Email sent to TCEQ on 13 June 2018:

From: Texas Rain [<mailto:texas.rain@centurylink.net>]
Sent: Wednesday, June 13, 2018 10:36 PM
To: 'kelly.mills@tceq.texas.gov'
Subject: Request for Guidance/Information...

Mr. Mills,

Hello!

We met briefly during my attempt to rein in the out-of-control groundwater district controlling Milam and Burleson Counties by filing a Petition for Inquiry in 2015. The Post Oak fiefdom under the leadership of Garland Westbrook has now issued pumping permits equaling 270% of the Simsboro MAG and 394% of the Carrizo MAG and continues issuing pumping permits. The extreme overpermitting has resulted in the situation in which actual pumping will exceed the Simsboro MAG by about 20% and the Carrizo MAG by 187% when the Vista Ridge Project goes online in 2020.

I am working on a project which requires me to understand the answers to the following two questions:

1. What happens to a groundwater district if they allow pumping to exceed the MAG?
2. What happens to a groundwater district which allows the DFCs to be exceeded?

Although I have tried, I have been unable to find any information about those two questions.

Do you know the answer to the above questions – and if not, can you direct me to where I can find information about what happens?

Thanking you for your time and consideration,

Curtis Chubb, Ph.D.
Milam County, Texas

Response received from TCEQ on 20 June 2018 (Highlights added by me):

From: Kelly Mills [mailto:kelly.mills@tceq.texas.gov]
Sent: Wednesday, June 20, 2018 12:55 PM
To: Texas Rain
Subject: RE: One Additional Request for Guidance/Information...

Dr. Chubb:

Sorry for my delayed response as I was out last week. Neither the Texas Water Code (TWC) nor any other State Law provides authority for the State of Texas to require a groundwater conservation district (GCD) to have a monitor well network or to prescribe to a GCD how its monitor well network should be designed. GCD rulemaking authority to carry out the powers and duties provided by Chapter 36 is provided by TWC §36.101 and TWC §§36.106 & 36.107 provide permissive authority for a GCD to make surveys of groundwater and to carry out research projects deemed necessary by the board.

TWC Chapter 36 is not prescriptive for what happens to a GCD if its allowed pumping exceeds a Modeled Available Groundwater (MAG) value or if a Desired Future Condition (DFC) is exceeded. As you are aware, the board of directors is responsible for the management of all affairs of a GCD including the adoption of a management plan, implementation of a management plan through adopted rules, and development and adoption of DFCs.

If you need more information on the development and adoption of DFCs or the determination of MAGs you can contact the Texas Water Development Board, or also the Texas Alliance of Groundwater Districts. Both have contact information available on their websites.

Kelly Mills

My conclusion = Although the State attaches great importance to groundwater districts adopting DFCs, the State has no authority to prevent groundwater districts from exceeding DFCs and their companion MAGs. It is left to individual Citizens to address these critical problems by filing a 'Petition for Inquiry' with the TCEQ which requires the Citizens to use their own resources to fight not only the attorneys and hydrologists of one groundwater conservation district but of all the surrounding groundwater conservation districts - I call this an "unlevel playing field."

My request = Your help in passing legislation to give the State the authority to prevent groundwater districts from exceeding DFCs and MAGs is respectfully requested. Groundwater districts cannot be counted on to self-enforce these critical protections of our groundwater resources. If the groundwater districts are allowed to treat DFCs and MAGs as irrelevant, both our groundwater resources and the future of our rural counties will be threatened.

