

# LONE STAR GROUNDWATER CONSERVATION DISTRICT

August 13, 2019

## MINUTES OF PUBLIC HEARING ON PERMIT APPLICATIONS

The Board of Directors of the Lone Star Groundwater Conservation District (“District”) met in regular session, open to the public, in the Lone Star GCD – James B. “Jim” Wesley Board Room located at 655 Conroe Park North Drive, Conroe, Texas, within the boundaries of the District on August 13, 2019.

### CALL TO ORDER:

President Melder called to order the Public Hearing on Permit Applications at 6:00 PM announcing the meeting open to the public.

### ROLL CALL:

The roll was called of the members of the Board of Directors, to wit:

Jon Paul Bouché  
Harry Hardman  
Webb Melder  
Jonathan Prykryl  
Larry A. Rogers  
Jim Spigener  
Stuart Traylor

All members of the Board were present, with the exception of Director(s) Spigener, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Samantha Reiter, Interim General Manager; Stacey V. Reese, District Counsel; District staff; and members of the public. *Copies of the public sign-in sheets and comment cards received are attached hereto as Exhibit “A” to the Regular Board of Directors Meeting minutes.*

### PRAYER AND PLEDGES OF ALLEGIANCE:

President Melder called on Director Rogers, for the opening prayer and Director Prykryl to lead the Pledge of Allegiance and the Pledge of Allegiance to the state flag.

### PUBLIC COMMENTS:

No comments were received.

Ms. Reiter briefed the Board on permit applications received for the month. Applications for consideration and recommended for possible approval included the below:

**1. Quadvest, LP (Mill Creek)**

Applicant is requesting the registration of a new well and production authorization in the amount of 700,000 gallons for 2019 and 6,600,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

**2. HMW Special Utility District (Hunters Retreat)**

Applicant is requesting an amendment to an Operating Permit for drilling authorization only. No additional production authorization is being requested at this time. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

**3. East Montgomery County MUD #4**

Applicant is requesting an amendment to an Operating Permit for an increase in production authorization in the amount of 15,000,001 gallons for 2019 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

**4. Tower Well**

Applicant is requesting the registration of a new well and production authorization in the amount of 37,500 gallons for 2019 and 200,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

**5. Nexeo Solutions**

Applicant is requesting an amendment to an Operating Permit for drilling authorization only. No additional production authorization is being requested at this time. Based on technical review of the information supplied, it is the General Manager's recommendation to approve that which is requested.

**6. Addison Woods, LLC**

Applicant is requesting the registration of a new well and production authorization in the amount of 20,000 gallons for 2019 and 3,000,000 gallons for 2020 and annually thereafter. Based on technical review of the information supplied, it is the General Manager's recommendation to approve the drilling and allocation for 2019 as requested and further authorize a **reduced** allocation of 804,800 gallons for 2020 and annually thereafter.

Following Ms. Reiter's report, Director Traylor motioned to approve items #1-6, as recommended by the Interim General Manager. Director Prykryl seconded. Motion approved.

President Melder adjourned the public hearing on permit applications at 6:03 PM.

**PASSED, APPROVED, AND ADOPTED THIS 10<sup>th</sup> DAY OF SEPTEMBER 2019.**



Stuart Traylor, Board Secretary

# LONE STAR GROUNDWATER CONSERVATION DISTRICT

August 13, 2019

## MINUTES OF REGULAR MEETING

The Board of Directors of the Lone Star Groundwater Conservation District (“District”) met in regular session, open to the public, in the Lone Star GCD - James B. “Jim” Wesley Board Room located at 655 Conroe Park North Drive, Conroe, Texas, within the boundaries of the District on August 13, 2019.

### CALL TO ORDER:

President Melder presided and called to order the regular Board of Directors meeting at 6:03 PM, announcing that it was open to the public.

### ROLL CALL:

The roll was called of the members of the Board of Directors, to wit:

Jon Paul Bouché  
Harry Hardman  
Webb Melder  
Jonathan Prykryl  
Larry A. Rogers  
Jim Spigener  
Stuart Traylor

All members of the Board were present, with the exception of Director(s) Spigener, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Samantha Reiter, Interim General Manager; Stacey V. Reese, District Counsel; District staff; and members of the public. *Copies of the public sign-in sheets and comment cards received are attached hereto as Exhibit "A".*

### PUBLIC COMMENTS:

No comments.

### EXECUTIVE SESSION:

After a proper and legally sufficient announcement to the public by President Melder, the Board of Directors recessed into a Closed Executive Session at 6:04 PM pursuant to Texas Government Code, Sections 551.071, to consult with the District’s attorney regarding pending or

contemplated litigation, settlement offers, personnel matters (§551.074), or on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act, Chapter 551, Government Code.

#### **RECONVENE IN OPEN SESSION:**

Following Executive Session, the Board reconvened in Open Session and President Melder declared it open to the public at 6:53 PM.

#### **APPROVAL OF THE MINUTES:**

President Melder stated the Board would consider the meeting minutes as listed for approval on today's agenda. Without further discussion, upon a motion by Director Bouché; seconded by Director Traylor, the Board approved the meeting minutes as presented.

- a) July 9, 2019, Public Hearing on Permit Applications
- b) July 9, 2019, Regular Board of Directors Meeting

#### **REVIEW OF UNAUDITED FINANCIALS FOR THE MONTH OF JULY 2019:**

Ms. Kay Martin, bookkeeper, reported that for the month of July 2019, income was \$196,773 and expenses were \$215,887 resulting in net loss of \$19,114. Year-to-date net income is \$477,140. Expenses this month included two payments to USGS for the revised agreement of \$82,200, which were the first two quarterly payments. Total cash was \$745,880.

#### **UPDATE AND DISCUSSION REGARDING 2020 OPERATING BUDGET AND WATER USE FEES:**

- a) Discuss, consider and possible action regarding approval of Resolution #19-006 adopting FY 2020 Operating and Capital Outlay Budgets:

Ms. Martin began the budget discussion by reviewing what was discussed at the July Board meeting, regarding how revenue is generated by the District, based on the water rate per 1,000 gallons of permitted allocation.

Ms. Martin then explained how the expense component of the 2020 budget was determined; based on historical information and forecasting expected expenses. She explained that a budget meeting had been held with Ms. Reiter, Board Treasurer Jim Spigener, and Director Larry Rogers participating in forecasting 2020 expenses.

Ms. Martin explained the budget net income calculation is derived from the approved rate and forecasted expenses. Ms. Martin explained that the equity position of the District should also be considered; due to sustained net losses for the past 3 years. Following board discussion, Director Rogers motioned to approve Resolution #19-006 adopting FY 2020 Operating and Capital Outlay Budgets.



Director Prykryl seconded. The motion passed. *A copy of Resolution #19-006 is attached hereto as Exhibit "B".*

President Melder asked the audience to join the Board in showing appreciation of Ms. Martin during her time as District Bookkeeper.

**DISCUSS, CONSIDER, AND TAKE ACTION AS NECESSARY ON RESOLUTION #19-007 AMENDING AND ESTABLISHING ADMINISTRATIVE FEE SCHEDULE:**

Ms. Reiter discussed this resolution and offered a recommendation to postpone this matter until the proposed rules have been accepted to reduce the need to later modify the administrative fee schedule. The 2018 administrative fee schedule can be used until the rules are established. President Melder stated that there would be no action on Resolution #19-007.

**DISCUSS, CONSIDER, AND TAKE ACTION AS NECESSARY ON RESOLUTION #19-008 AUTHORIZING WATER USE FEE RATE SCHEDULE FOR 2020:**

After some discussion and consideration of the adopted FY 2020 Operating and Capital Outlay Budget, potential future litigation and anticipated cash flow requirements, a reduced water use fee rate of \$0.085 per 1,000 gallons for 2020 was recommended. Director Bouché motioned to approve Resolution #19-008 setting the water use fee rate for 2020 at \$0.085 cents. Director Traylor seconded. Motion carried. *A copy of Resolution #19-008 is attached hereto as Exhibit "C".*

**DISCUSS, CONSIDER, AND TAKE ACTION AS NECESSARY REGARDING THE DISTRICT'S BANKING DEPOSITORY FOR THE DISTRICT'S PUBLIC FUNDS FOR A TWO-YEAR RENEWAL:**

Ms. Samantha Reiter introduced the 2-year agreement with First Financial Bank (FFB). Ms. Martin followed by explaining that the letter from Mr. Lee Warren, Executive Vice President of FFB, assured the District that the terms of agreement were the same and they would continue to waive all fees as in the past. Mr. Warren also included a Depositor Contract which is a standard agreement and also sent the Safe Keeping contract. There were three documents sent by FFB which included the letter from Mr. Warren, the Depositor Contract, and the Safe Keeping requirements. Ms. Martin confirmed that the documents were suitable.

Director Hardman motioned to continue the district's banking depository with First Financial Bank. Director Prykryl seconded. Motion carried.

**DISCUSS, CONSIDER, AND TAKE ACTION AS NECESSARY TO APPROVE RESOLUTION #19-009 REVIEWING AND APPROVING INVESTMENT POLICY AND INVESTMENT STRATEGIES AS REQUIRED ANNUALLY BY THE PUBLIC FUNDS INVESTMENT ACT OF TEXAS:**

Ms. Martin discussed the resolution. She further reported the criteria of six hours of continuing professional education this year and four hours next year for Treasurer Jim Spigener.

Director Hardman moved to approve Resolution #19-009. Director Prykryl seconded. Motion carried. *A copy of the Resolution #19-009 is attached hereto as Exhibit "D".*

**RECEIVE INFORMATION FROM DISTRICT'S TECHNICAL CONSULTANTS REGARDING SUBSIDENCE STUDIES:**

Ms. Reiter gave a short report from Mr. Mike Thornhill, District Hydrogeologist. The consultants were compiling and reviewing reports from numerous previous studies including subsidence compaction and fault movement studies. They intend to communicate with various agencies and institutions including TWDB, USGS, Subsidence Districts, and universities.

**RECEIVE INFORMATION AND/OR STATUS UPDATE REGARDING THE TWO STUDY GROUPS ON PROPOSED DRAFT RULES:**

Ms. Stacey Reese, District Council, reported that both the Non-Technical and the Technical Study Groups had met. No future meetings are currently scheduled, though consultants have crunched the data and are preparing to make a presentation of their conclusions. Ms. Reese discussed that there is a rough draft of the rules and meetings with both groups will be resumed later this summer. Next will be a workshop for the two study groups; open to the public, followed by draft rules based on analysis from the data to be considered for publication.

**DISCUSS, CONSIDER, AND TAKE ACTION AS NECESSARY TO FILL THE GENERAL MANAGER'S POSITION ON A PERMANENT BASIS:**

Director Rogers opened the discussion by recommending that Ms. Reiter be considered as the permanent District General Manager. He gave her high marks on exceeding expectations during the 120-day probation period and moved to approve Samantha Reiter as the permanent General Manager. Director Bouché seconded. The motion carried. President Melder led the group in giving applause for Ms. Reiter in her promotion to General Manager.

**GROUNDWATER MANAGEMENT AREA 14 - UPDATE THE BOARD ON THE ISSUES RELATED TO JOINT PLANNING ACTIVITIES AND DEVELOPMENT OF DESIRED FUTURE CONDITIONS IN GMA 14:**

- a) Discussion, consideration, and possible action on any items related to Lone Star GCD's proposal(s) to and/or participation in GMA 14:

Director Hardman reported that the GMA Representatives would be meeting at the Harris-Galveston Subsidence District's office on August 15<sup>th</sup>. Ms. Reese added that at the June meeting the District asked the GMA 14 to reconsider revising the second round of DFCs and/or to reconsider an expedited schedule which is to be discussed at the August 15<sup>th</sup> meeting.

**GENERAL MANAGER'S REPORT:**

Ms. Reiter announced that the District was live broadcasting for the first time during this evening's August meeting. She gave kudos to Ms. Jennifer Thayer as liaison to the broadcasting



team to insure all ran smoothly for the night's inaugural telecast. Ms. Reiter mentioned the link on the meetings page and large icon to access the live broadcast. The 2018 Annual Report was highlighted, and copies were given to all directors and made available to the public. She reported on the meeting with the City of Conroe including attendees Director Melder, Director Hardman, Ms. Reiter, and General Counsel (via telephone). She stated that the District would continue to work toward a resolution with the City of Conroe regarding payment of water use fees owed. Lastly, it was noted that the Texas Alliance of Groundwater District's 2019 Groundwater Summit is taking place August 20-22 in San Antonio.

#### **GENERAL COUNSEL'S REPORT:**

Ms. Reese updated the Board on filing the appeal to the TWDB's decision to reject the District's Management Plan. The basis for TWDB's non-approval was that they stated the 2010 DFC's from the first round of joint planning applied and needed to be included in the District's Management Plan. She reported that the District's brief was submitted on Friday, August 9, 2019. The brief stated that the District does not believe the TWDB has the authority to reinstate DFCs, exceeded its authority, and that their decision was unreasonable because it created inconsistent scientific, legal, and policy results. *A copy of the legal brief is attached hereto as Exhibit "E".* The appeal is expected to be heard at the October TWDB hearing.

Stratta/Fazzino case will present oral arguments at the 5<sup>th</sup> Circuit Court in October 2019 rather than in September.

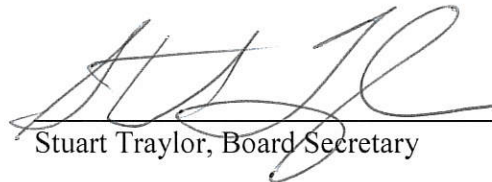
#### **NEW BUSINESS:**

None was received.

#### **ADJOURN:**

There being no further business, upon a motion made by Director Traylor and seconded by Director Prykryl, the meeting was adjourned at 8:01 PM.

**PASSED, APPROVED, AND ADOPTED THIS 10<sup>th</sup> DAY OF SEPTEMBER 2019.**



Stuart Traylor, Board Secretary





# SIGN IN SHEET

August 13, 2019  
Board Meeting

Do you wish to speak on an agenda item?	NAME	CITY, STATE, ZIP	E-Mail	Would you like to receive LSGCD updates & information?
	Jonathan Smith	Porter SD	JSmith@PorterSD.com	Yes
N	TINA FELKAI	CONROE TX	ON FILE	
N	Suellen Myers	The Woodlands	" "	Yes
N	Shirley Sloan	—	—	already
N	Penny Bradshaw	The Woodlands		"
N	Kenny Eckelby	Shenandoah	on file	—
No	Jon Blakley	MSS	on file	yes
N	Chris Byerman	Nexus Solutions Conroe	chbyerman@nexusolutions.com	already
N	Phillip Smith	WHCRWA/DAMMENBAUM ENCL	phillip.smith@dammenbaum.com	no
N	JENNIFER SEALE	CONROE, TX	ON FILE	no
N	TRAVIS WALKER	BLEYL	TWALKER@BLEYLENGINEERING.COM	No
N	Michael Sullivan	Bleyl	msullivan@	No

# LONE STAR GROUNDWATER CONSERVATION DISTRICT

## Resolution No. 19-006

### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT ADOPTING AN OPERATING AND CAPITAL OUTLAY BUDGET FOR 2020

**WHEREAS**, the Lone Star Groundwater Conservation District (the "District") was created by the Legislature of the State of Texas by the Act of May 17, 2001, 77th Leg., R.S., ch. 1321, 2001 Tex. Gen. Laws 3246, as amended (the "Enabling Act"), as a groundwater conservation district operating under Chapter 36, Texas Water Code, and the Enabling Act; and

**WHEREAS**, the District's Board of Directors and staff has worked diligently to identify all reasonably anticipated District revenues, expenses, and activities for the January 1 through December 31, 2020 budget cycle, and, after giving much consideration to these important factors, has developed a proposed 2020 budget for the Board's consideration and deliberation (the "2020FY Budget");

**WHEREAS**, the District Board of Directors (the "Board") has reviewed and considered the 2020 Operating and Capital Budget;

**WHEREAS**, pursuant to Section 36.154 of the Texas Water Code, the District has prepared a budget that contains a complete financial statement, including a statement of the outstanding obligations of the District, the amount of cash on hand to the credit of each fund of the District, the amount of money received by the District from all sources during the previous year, the amount of money available to the District from all sources during the ensuing year, the amount of the balances expected at the end of the year in which the budget is being prepared, the estimated amount of revenues and balances available to cover the proposal budget, and the estimated fee revenues that will be required;

**WHEREAS**, the Board finds that the adoption of the 2020 Budget, attached hereto as Attachment A and incorporated herein by this reference for all purposes, is merited to support the District's activities and related expenses from January 1, 2020 through December 31, 2020 and that the attached budget will allow the District to carry out the District's objectives and responsibilities as prescribed by the Enabling Act and Chapter 36 of the Texas Water Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT THAT:**

1. The above recitals are true and correct.
2. The Board of Directors of the Lone Star Groundwater Conservation District hereby adopts an operating and capital outlay budget for January 1, 2020 to December 31,

2020 as provided in the budget appended hereto as "Attachment A," which is incorporated herein by this reference and is hereby approved and adopted.

3. The Board of Directors, its officers, and the District employees are further authorized to take any and all actions necessary to implement this resolution.

AND IT IS SO ORDERED.

PASSED AND ADOPTED on this 13<sup>th</sup> day of August 2019.

**LONE STAR GROUNDWATER CONSERVATION DISTRICT**

By:   
Webb Melder, President

ATTEST:

  
Stuart Traylor, Board Secretary



Attachment "A"



Income

ADMINISTRATIVE FEES

Application Fees

AWS Production Permit	\$	3,000
AWS Groundwater Test Wells		1,500
Transfer of Early Conversion Credits		-
Existing Well Application		1,500
Emergency Permit		
Operating Permit		22,000
Transfer of Permitted Authorization		1,500
GRP Amendment Application		
Application Fee- Other		4,950

Total Application Fees 34,450

Change in Ownership 4,000

Open Records Request 1,500

Publications Fees 5,000

Returned Check Fee / Other Admin fees 50

Well Re-inspection Fee 2,000

Total ADMINISTRATIVE FEES 47,000

INTEREST INCOME 5,000

LONE STAR GCD WATER USE FEES

Early Conversion Credit Water Use Fee 44,060

Export Water Use Fee 600

Historical Use 1,494,901

Ag Permits 1,616

Operating Permit - prepaid 2020 1,078,536

AWS Production Fees -2020 167,378

Over Pumpage Fee 5,500

Penalty/Interest 5,000

Total LSGCD WATER USE FEES 2,797,591

Total Income \$ 2,849,591

Expense

ADVERTISING/PUBLIC NOTICES \$ 10,000

ATTORNEY FEES





General Counsel Work	360,000
Additional Legal Work	10,000
<b>Total ATTORNEY FEES</b>	<b>370,000</b>
<b>AUDIT FEES</b>	8,750
<b>BOARD EXPENSE</b>	
Per Diem	63,000
Payroll Tax Liability	4,820
Board Meeting Expense	4,000
Meeting/Conference	3,000
<b>Total BOARD EXPENSE</b>	<b>74,820</b>
<b>BUILDING EXPENSE</b>	
Building Maintenance	15,000
Utilities/Custodial/Phone/Cable	47,000
Upgrade phone service	-
Upgrade sound and recording system-board room	-
<b>Total BUILDING EXPENSE</b>	<b>62,000</b>
<b>COMPUTER SUPPORT</b>	
Hosting/Internet/Backup	12,000
Software	5,000
Computer Repair & Support	15,500
<b>Total COMPUTER SUPPORT</b>	<b>32,500</b>
<b>EDUCATION/PUBLIC AWARENESS COORDINATION</b>	
Educational Curriculum in Schools	50,000
ET Weather Station Network	5,000
Communication/Public Awareness	8,500
Water Efficiency Network	750
Website Modification	2,500
Rainwater Collection Maintenance	500
Conservation products	3,500
<b>Total COMMUNITY AWARENESS/PUBLIC RELATIONS</b>	<b>70,750</b>
<b>ELECTION EXPENSE</b>	100,000
<b>ENGINEERING CONSULTANT SERVICES</b>	
District Engineer	5,000
Engineering Consultant Services	200,000



Well Permitting Database Management	5,000
GMA 14 Planning	50,000
Well Spacing -	-
<b>Total ENG/CONSULTANT SERVICES</b>	<b>260,000</b>



<b>FIELD/TECHNICAL EXPENSE</b>	
Field Supplies	3,000
Fuel Expense	3,000
Vehicle-capital expense	30,000
Vehicle/Mobile Lab Repair and Maintenance	2,500
<b>Total FIELD/TECH EXPENSE</b>	<b>38,500</b>
<b>INSURANCE EXPENSE</b>	
Bonds	800
Building Insurance	3,076
Errors & Omissions	2,591
Liability	1,178
Vehicle Insurance	3,167
<b>Total INSURANCE</b>	<b>10,812</b>
<b>LITIGATION EXPENSE</b>	
2017 Engineering/Consultant	-
Legal - Lawsuit	50,000
Legal - DFC Appeal	-
Engineering Consultant Services	-
GMA 14 Planning (amendment)	-
<b>Total LITIGATION EXPENSE</b>	<b>50,000</b>
<b>MANAGER</b>	
Travel/Edu/Training	6,000
Vehicle Allowance	7,200
<b>Total MANAGER</b>	<b>13,200</b>
<b>MEMBERSHIPS DUES/SUBSCRIPTIONS</b>	4,500
<b>MISCELLANEOUS</b>	1,500
<b>OFFICE</b>	
Office Equipment	6,000
Equipment Lease - Copier	-
Supplies	3,500
<b>Total OFFICE</b>	<b>9,500</b>



<b>PAYROLL EXPENSES (Employee)</b>	
Salaries	530,000
Medical/Life	92,000
Payroll Tax Liability	40,545
Unemployment Tax	1,400
Retirement	31,800
Payroll Service Fees	1,000
Tuition Assistance	-
Temporary	-
Workman's Comp	2,269
Payroll Expenses-Other	-
<b>Total PAYROLL EXPENSES</b>	<b>699,014</b>
<b>POSTAGE EXPENSE</b>	
Postage/Shipping/Delivery Service	5,000
Postage Meter and Supplies	2,000
<b>Total POSTAGE EXPENSE</b>	<b>7,000</b>
<b>PRINTING (Non-PR...Envelopes...)</b>	7,000
<b>PROGRAMS</b>	
Hydrogeological Modeling/Protection	1,000
Subsidence Study	60,000
<b>USGS JOINT FUNDING AGREEMENT</b>	
<i>USGS - Technical Assistance</i>	119,400
<i>USGS - Groundwater Level Data</i>	45,000
<i>USGS - Water Level change/subsidence</i>	-
<i>USGS - Water Quality Recon/Catahoula</i>	-
<b>Total PROGRAMS</b>	<b>225,400</b>
<b>REBATE WATER USE FEES</b>	30,000
<b>RESERVE FUNDS - Expense</b>	-
<b>TRAVEL/TRAINING STAFF</b>	3,000
<b>Total Expense</b>	<b>\$ 2,088,246</b>
<b>Other</b>	
<b>DEPRECIATION</b>	50,000
<b>NET INCOME</b>	<b>\$ 711,345</b>



**RESOLUTION NO. #19-008**

**LONE STAR GROUNDWATER CONSERVATION DISTRICT**

**RESOLUTION ADOPTING 2020 WATER USE FEES FOR THE LONE STAR  
GROUNDWATER CONSERVATION DISTRICT PURSUANT TO THE RULES OF  
THE LONE STAR GROUNDWATER CONSERVATION DISTRICT**

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

**WHEREAS**, the Lone Star Groundwater Conservation District ("District") was created by the Legislature of the State of Texas in Acts 2001, 77<sup>th</sup> Leg., R.S., ch. 1321, p. 3246, § 1(a), as amended (the "Enabling Act"), as a groundwater conservation district operating under Chapter 36, Texas Water Code, and the Enabling Act; and

**WHEREAS**, pursuant to said Act, § 5(a), the District Board of Directors of the District (the "Board") has the permitting and general management powers granted under Chapter 36 of the Texas Water Code;

**WHEREAS**, § 36.101 of the Texas Water Code authorizes a groundwater conservation district to make and enforce rules to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence or prevent waste of groundwater and to carry out the powers and duties provided by Chapter 36 of the Texas Water Code;

**WHEREAS**, §§ 36.205 and 36.122 of the Texas Water Code and the Act authorize the District to assess fees on the production of groundwater within its jurisdiction and for the transfer of such water for use outside of the District;

**WHEREAS**, the assessment of such fees serves a legitimate regulatory purpose;

**WHEREAS**, the rules of the District authorize the Board of Directors of the District to establish by resolution a regulatory water use fee to accomplish the purposes of the District;

**WHEREAS**, the rules of the District authorize the Board of Directors of the District to establish by resolution a groundwater transport fee for the transportation of groundwater out of the District;

**WHEREAS**, the District staff have worked diligently to forecast all reasonably anticipated revenues, expenses, and activities; and after giving much consideration to these important factors, the Board of Directors recommends a regulatory water use fee of \$ 0.085 per 1,000 gallons for all groundwater permitted, other than agricultural use and that permitted in the Catahoula Restricted Aquifer for the calendar year 2020;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT AS FOLLOWS:**

1. A regulatory water use fee of \$1 per acre-foot of groundwater permitted for "agricultural use," as that term is defined by § 36.001(20), TEX. WATER CODE ANN. (Vernon Supp. 2004); a regulatory water use fee of \$0.085 per 1,000 gallons for all uses, other than "agricultural use", of groundwater permitted in the Gulf Coast Aquifer; and a regulatory water use fee of \$0.06 per 1,000 gallons for all uses, other than "agricultural use", of groundwater permitted in the Catahoula Restricted Aquifer, are hereby adopted as the regulatory water use fees of the District for the calendar year 2020. Notwithstanding the previous sentence, in the event that the application of these adopted rates results in a total annual regulatory water use fee payment of less than (\$10.00) for an individual permit issued by the District, the regulatory water use fee payment to be assessed to such a permit shall be the Minimum Regulatory Water Use Fee, which is hereby established as (\$10.00) and so adopted. The District shall impose a 50 percent export surcharge in addition to the District's regulatory water use fee for in-District use for transportation of groundwater for use outside of the District, subject to the Act and District Rules. Such fees set forth above shall be assessed as set forth in the Rules of the District for the time period of January 1, 2020, through December 31, 2020;
2. The regulatory water use and groundwater transport fees so adopted shall be effective January 1, 2020, and continue in effect until modified by the Board of Directors;
3. The regulatory water use and groundwater transport fees so adopted shall supersede any and all such fees previously adopted by Resolution or other action of the Board of Directors; and
4. The General Manager is further authorized to take any and all reasonable action necessary for the implementation of this resolution.

AND IT IS SO ORDERED.

PASSED AND ADOPTED this 13<sup>th</sup> day of August 2019.

**LONE STAR GROUNDWATER CONSERVATION DISTRICT**

By:   
Webb Melder, President

ATTEST:

  
Stuart Traylor, Board Secretary



**RESOLUTION NO. #19-009**

**LONE STAR GROUNDWATER CONSERVATION DISTRICT**

**RESOLUTION REVIEWING AND APPROVING INVESTMENT POLICY AND  
INVESTMENT STRATEGIES**

THE STATE OF TEXAS §

COUNTY OF MONTGOMERY §

**WHEREAS**, the Lone Star Groundwater Conservation District ("District") was created by the Legislature of the State of Texas in Acts 2001, 77<sup>th</sup> Leg., R.S., ch. 1321, p. 3246, § 1(a);

**WHEREAS**, the Public Funds Investment Act of Texas ("the Investment Act") requires that the Board of Directors annually review the investment policy and investment strategies of the District and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies;

**WHEREAS**, Sec. 36.1561, Water Code, requires the investment officers of the District to attend six hours of initial training within twelve months after taking office or assuming duties and four hours of renewal investment training instruction relating to investment responsibilities not less than once every two years from an independent source approved by the Board of Directors of the District;

**WHEREAS**, the Board of Directors is charged with reviewing annually the investment policy and investment strategies of the District and drafting amendments for consideration by the Board;

**WHEREAS**, on August 13, 2019, the Board of Directors met and reviewed the Investment Policy of the District, attached hereto, and the investment strategies contained therein;

**WHEREAS**, the Board of Directors has reviewed the investment officer designations of the District and has determined such designations are current;

**WHEREAS**, the investment officers of the District have attended investment training through an independent source approved by the Board and are meeting the training requirements set forth in the Investment Act; and

**WHEREAS**, said Board of Directors has reviewed monthly financial reports in compliance with requirements set forth in the Investment Act.


**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF  
THE LONE STAR GROUNDWATER CONSERVATION DISTRICT AS FOLLOWS:**

1. The Board of Directors of the District, after reviewing the existing investment policy and investment strategies of the District, hereby approves the District's Investment Policy (*see attached*).
2. That such Investment Policy supersedes any and all Investment Policy previously adopted by the Board of Directors.
3. The General Manager and Treasurer of the Board of Directors are hereby authorized to continue to serve as Investment Officers for the District. This designation may be changed from time to time without reference to or repeal of this resolution.
4. The General Manager is authorized to take any and all action necessary for the implementation of this resolution.

AND IT IS SO ORDERED.

PASSED AND ADOPTED this 13<sup>th</sup> day of August 2019.

**LONE STAR GROUNDWATER CONSERVATION DISTRICT**

By:   
Webb Melder, President

ATTEST:

  
Stuart Traylor, Secretary





## INVESTMENT POLICY

This Investment Policy (the "Policy") is adopted by the Board of Directors of Lone Star Groundwater Conservation District, of Montgomery County, Texas (the "District"), pursuant to Chapter 2256 of the Texas Government Code and Chapter 36 of the Texas Water Code.

### ARTICLE I

#### Section 1.01. Purpose.

This investment policy establishes the principles and criteria by which the Lone Star Groundwater Conservation District shall invest its public funds to ensure the safety and protection of these funds at all times while providing adequate liquidity for all District cash flow demands and optimizing the District's investment returns. This investment policy is in compliance with all state and local statutes governing the investment of public funds including the Public Funds Investment Act, Chapter 2256, Government Code and the Public Funds Collateral Act, Chapter 2257, Government code. This policy also will specify the scope of authority of District Officials responsible for the investment of District funds.

#### Section 1.02. Annual Review.

The District shall review this Investment Policy at least annually and adopt a resolution confirming the continuance of the Investment Policy without amendment or adopt an Amended Investment Policy.

### ARTICLE II

#### Section 2.01. Definitions.

Unless the context requires otherwise, the following terms and phrases used in this Policy shall mean the following:

- a) "Authorized Collateral" or "Collateral" means any security with which District funds may be secured under Chapter 2257, Texas Government Code.
- b) "Authorized Investment" shall mean any security the District is authorized to purchase as an investment under Chapter 2256, Texas Government Code.
- c) "Board" shall mean the Board of Directors of the Lone Star Groundwater Conservation District.

- d) "Director" shall mean a person appointed to serve on the Board of Directors of the District.
- e) "District" shall mean the Lone Star Groundwater Conservation District, a political subdivision of the State of Texas, created under authority of Article XVI, §59 of the Texas Constitution and with Act of May 17, 2001, 77<sup>th</sup> Leg., R.S., ch. 1321, 2001 Tex. Gen. Laws 3246 (as amended), (H.B. No. 2362) and Chapter 36, Water Code.
- f) "District Officials" shall mean the Investment Officer, District Directors, officers, employees, and persons and business entities handling investments for the District.
- g) "Employee" shall mean any person employed by the District, but does not include independent contractors or professionals hired by the District as outside consultants.
- h) "Investment Act" shall mean the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended from time to time.
- i) "Investment Officer(s)" means the Director(s) or Employee(s) of the District appointed from time to time by the Board to invest and reinvest the funds of the District.

### ARTICLE III

#### Section 3.01. Policy of Investment.

A. The preservation of the District's principal shall be the primary concern of the District Officials who are responsible for the investment of District funds. It is the policy of the District that after allowing for the anticipated cash flow requirements of the District and giving due consideration to the safety and risk of investment, all available funds shall be invested in conformance with these legal and administrative guidelines seeking to optimize interest earnings. Applicable legislation includes, but is not limited to, Public Funds Investment Act, Chapter 2256, Government Code, Public Funds Collateral Act, Chapter 2257, Government Code, and any other applicable State or Federal laws or restrictions.

B. District funds shall be invested and reinvested by the District's Investment Officer only in specific allowable investments types as listed in Chapter 2256, Texas Government Code, and the District shall not invest in any investments not specifically allowed under that statute or deemed inappropriate by the District's Board of Directors.

Principal and accrued interest invested in Certificates of Deposit ("CDs") in accordance with this policy shall not exceed the FDIC, or its successor's, insurance limits or the Collateral pledged as security for the District's investments. It shall be acceptable for the District's Investment Officer to periodically receive interest on the CDs if needed to keep the amount of the funds under the insurance or collateral limits.

It shall be the responsibility of the District's Investment Officer to invest and reinvest the District funds in accordance with this policy to meet the needs and requirements of the District. The Board, by separate resolution, may provide that the Investment Officer may withdraw or transfer funds from and to accounts of the District on such terms as the Board considers advisable.

#### ARTICLE IV

##### Section 4.01. Investment Officer.

The District's Board of Directors shall designate one or more officers or employees of the District to be responsible for the investment of its funds and be the Investment Officer. No person may deposit, withdraw, invest, transfer, or otherwise manage funds of the District without this express authority. Investment Officer(s) shall be responsible for the investment of District funds, consistent with the investment policy adopted by the District. An Investment Officer's authority is effective until rescinded by the Board of Directors or until termination of employment by the District. Designated Board Members and Investment Officer(s) shall comply with all continuing training requirements including those established by Government Code §2256.008.

##### Section 4.02. Training.

The Investment Officer(s) of the District shall attend one or more investment training sessions as required by the Investment Act and Chapter 36.1561(b), Water Code, through courses and seminars offered by professional organizations, associations, and other independent sources in order to ensure the quality and capability of investment management in compliance with the Investment Act. The Investment Officer of the District shall attend a training session of at least six hours of instruction relating to investment responsibilities under Chapter 2256, Government Code, not later than the first anniversary of the date the officer takes office or assumes the officer's duties. The Investment Officer shall attend at least four hours of additional investment training on or before the second anniversary of the last training session the officer attended. The investment training session shall be provided by an independent source approved by the Board. For purposes of this policy, an "independent source" from which investment training shall be obtained shall include a professional organization, an institution of higher education or any other sponsor other than a business organization with whom the District may engage in an investment transaction.

Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with Chapters 2256 and 2257, Government Code.

##### Section 4.03. Disclosures Required of Persons Selling Investments of the District.

The Investment Officer(s), the District bookkeeper, and any person who assists the Investment Officer with the Investment Officer's duties hereunder shall disclose in writing any personal business relationship or relationship within the second degree by affinity or consanguinity and any individual seeking to sell an investment to the District as required by the Investment Act.

Such disclosure statement shall be filed with the Board. In addition, any individual or business organization seeking to sell an investment to the District shall provide a written statement they do not boycott the State of Israel and will not boycott the State of Israel during the term of any contract with the District.

#### Section 4.04. Certification from Sellers of Investments.

The Investment Officer(s) shall present this Policy to any person offering to engage in an investment transaction with the District and shall obtain from such person a certificate in substantially the form attached here as "Exhibit A", signed by a qualified representative of the business organization offering to engage in an investment transaction with the District. This certificate will document such person's receipt, review, and understanding of this Policy; will reflect that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the business organization and the District that are not authorized by the District's investment policy, as required by the Investment Act; and will reflect that the business organization has reviewed the terms and characteristics of the investment and determined that the investment complies with the requirements of the Investment Act.

#### Section 4.05. Safekeeping and Custody (FIRREA)

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires that the depository institution's board of directors or a designated committee approve depository agreements which must be an official record of the institution continuously since its execution. The Investment Officer(s) shall request a copy of the depository's resolution approving the agreement.

Depository agreements executed in accordance with FIRREA, and requiring a resolution of the bank board or bank loan committee, will be established before funds are deposited.

Collateral will be pledged under the terms of a written tri-party agreement executed under the terms of FIRREA. If the custodian is the Federal Reserve the District will execute a Circular 7 pledge agreement. The agreement will be approved by resolution of the bank's board or loan committee.

#### Section 4.06. Reporting by the Investment Officer.

Not less than quarterly and within a reasonable time after the end of the period reported, the Investment Officer(s) shall prepare and submit to the Board a written report of the investment transactions for all funds of the District for the preceding reporting period. The report must:

1. Describe in detail the investment position of the District on the date of the report, including a listing of each individual security held at the end of the reporting period;



2. Be prepared jointly by all the Investment Officers of the District, if the District appoints more than one;
3. Be signed by all Investment Officers and District Officials who prepare the report;
4. State the book value and the market value of each separately invested asset showing the unrealized gains or losses resulting from appreciation or depreciation at the beginning and end of the reporting period by the type of asset and fund type invested;
5. Show the average weighted yield to maturity of the portfolio.
6. Show the percentage of the total portfolio that each type of investment represents;
7. State the maturity date of each separately invested asset that has a maturity date;
8. State the District fund for which each individual investment was acquired; and
9. State the compliance of the investment portfolio as it relates to this Policy and the Investment Act.

The District's annual audit shall include a formal annual review of the investment reports with the results reported to the Board.

**Section 4.07. Assistance with Certain Duties of the Investment Officer.**

The Board hereby authorizes and directs the District's Bookkeeper and any other District Officials requested by the Investment Officer to assist the Investment Officer(s) with any of his duties, including but not limited to the following:

1. Presenting a copy of the Policy to any person or business organization seeking to sell an investment to the District and obtaining the necessary written certification from such seller referred to in this section;
2. Handling investment transactions;
3. Preparing and submitting to the Board the written report of all investment transactions for the District as required by this section;
4. Researching investment options and opportunities;
5. Obtaining written depository pledge agreements as required herein;
6. Obtaining safe-keeping receipts from the Texas financial institution which serves as a depository for pledged Collateral; and

7. Reviewing the market value of the District's investments and of the Collateral pledged to secure the District's funds.

**ARTICLE V**  
**PROCEDURES FOR INVESTMENT OF DISTRICT MONIES**

**Section 5.01. General Provisions**

All funds and accounts of the District shall be invested only in authorized investments in accordance with this Policy and shall comply with any additional requirements imposed by applicable state law or federal tax law, including the Investment Act and the Public Funds Collateral Act. The Investment Officer(s) may withdraw or transfer funds from and to accounts of the District only in compliance with this Policy. No fund groups shall be pooled for the purposes of investment. Methods shall be in place to monitor the market price of investments acquired with District funds.

**Section 5.02. Solicitation of Bids for Certificates of Deposit.**

Requests and bids for certificates of deposit shall be solicited in writing, electronically, or in any combination of those methods.

**Section 5.03. Settlement Basis.**

All purchases on investments, except investment in investment pools or in mutual funds, shall be made on a delivery versus payment basis. The safekeeping entity for all District investments and for all Collateral pledged to secure District funds shall be approved by the Investment Officer(s).

**Section 5.04. Monitoring of the Market Value of Investments and Collateral.**

The Investment Officer(s), with the help of District Officials as needed, shall determine the market value of each investment and of all Collateral pledged to secure deposits of District funds at least quarterly and at a time as close as practicable to the closing of the reporting period for investment. Pledged collateral values shall be included on the investment report. The following methods shall be used:

- (a) Certificates of deposit shall be valued at their face value plus any accrued but unpaid interest.
- (b) Shares in money market mutual funds and investment pools shall be valued at par plus any accrued but unpaid interest.
- (c) Other investment securities with a remaining maturity of one year or less may be valued in any of the following ways:

- (1) the lower of two bids obtained from securities broker/dealers for such security;
  - (2) the average of the bid and asked prices for such investment security as published in The Wall Street Journal or The New York Times;
  - (3) the bid price published by any nationally recognized security pricing service; or
  - (4) the market value quoted by the seller of the security or the owner of such Collateral.
- (d) Other investment securities with a remaining maturity greater than one year shall be valued at the lower of two bids obtained from securities broker/dealers for such security, unless two bids are not available, in which case the securities may be valued in any manner provided in 5.06(c) hereof.

**ARTICLE VI**  
**PROVISIONS APPLICABLE TO ALL FUNDS**

**Section 6.01. Provisions Applicable to All Fund Groups.**

A. All Funds of the District shall be invested only in accordance with this Policy and shall comply with any additional requirements imposed by Bond Resolutions of the District and applicable state law or federal tax law, including the Investment Act and the Public Funds Collateral Act.

B. The Board, by separate resolution, may provide that the District's bookkeeper, under direction from the Investment Officer(s), may withdraw or transfer funds from and to accounts of the District only in compliance with this Policy.

C. No fund groups shall be pooled for the purposes of investment.

**Section 6.02. Policy of Securing Deposits of District Funds – Applicable to All Deposited District Funds.**

A. The District recognizes that FDIC (or its successor) insurance is available for District funds deposited at any one Texas Financial Institution (including branch banks) only up to a maximum of \$250,000 (including accrued interest) for each of the following: (i) demand deposits, (ii) time and savings deposits, and (iii) deposits made pursuant to an indenture or pursuant to law in order to pay bondholders or noteholders. It is the policy of the District that all deposited funds in each of the District's accounts shall be insured by the FDIC, or its successor, and to the extent not insured, shall be secured by Collateral pledged to the extent of the fair market value of the principal amount deposited plus accrued interest.

B. If it is necessary for the District's depositories to pledge Collateral to secure the District's deposits, (1) the Collateral pledge agreement must be in writing, (2) the Collateral pledge agreement must be approved by the depository's board of directors or loan committee, (3) the depository's approval of the Collateral pledge agreement must be reflected in the minutes of the meeting of the depository's board or loan committee approving the same, and (4) the Collateral pledge agreement must be kept in the official records of the depository. The depository must provide to the Investment Officer or District Officials written proof of the depository's approval of the pledge agreement as required herein in a form acceptable to the District. A signed or certified copy of the minutes of the meeting of the depository's board or loan committee reflecting the approval of the Collateral pledge agreement or other written documentation of such approval acceptable to the Investment Officer will be accepted. It is the preference of the Board that all requirements of this section be met prior to the deposit of any District funds in such financial institution when a pledge of Collateral is required; however, the Board recognizes that compliance with this preference might not be practicable due to time constraints for making a deposit. In such event, the Board directs the Investment Officer and District Officials to proceed diligently to have such agreement approved and documented to assure protection of the District's funds. If the decision is made to forego the protection of a collateral pledge agreement with any depository, the District bookkeeper shall be responsible for maintaining the balance of deposit(s) in such depository plus any accrued but unpaid interest at or below FDIC insurance levels.

C. Collateral pledged by a depository shall be held in safekeeping at an independent third party institution, and the District bookkeeper shall obtain safe-keeping receipts from the Texas financial institution or the safekeeping institution that reflect that Collateral as allowed by this investment Policy and in the amount required was pledged to the District. Principal and accrued interest on deposits in a financial institution shall not exceed the FDIC's, or its successor's, insurance limits or the market value of the Collateral pledged as security for the District's deposits. It shall be acceptable for the bookkeeper to periodically receive interest on deposits to be deposited to the credit of the District if needed to keep the amount of the funds under the insurance or Collateral limits. It is the preference of this Board that there be no sharing, splitting or co-tenancy of Collateral with other secured parties or entities; however, in the event that a depository cannot accommodate this preference due to the denominations of the securities to be pledged, the Board directs the Investment Officer and District Officials to obtain appropriate protections in the pledge agreement with the depository to assure that the Collateral is liquidated and the funds distributed appropriately to all parties with a security interest in such Collateral. The District bookkeeper shall monitor the pledged Collateral to assure that it is pledged only to the District, review the fair market value of the Collateral to ensure that the District's funds are fully secured, and report periodically to the Investment Officer and the Board regarding the Collateral.

D. The District's funds deposited in any Texas financial institution, and to the extent they are not insured, may be secured in any manner authorized by law for the District as such law is currently written or as amended in the future. The following are the securities that may be used as Collateral:

1. Obligations of the U.S. or its agencies and instrumentalities;

2. Direct obligations of the State of Texas or its agencies and instrumentalities;
3. Collateralized mortgage obligations directly issued by a federal agency or instrumentality or the U.S., the underlying security for which is guaranteed by an agency or instrumentality of the U.S.;
4. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of the U.S. or the State of Texas or their respective agencies and instrumentalities;
5. Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.
6. Certificates of deposit issued by a depository institution that has its main office or a branch office in Texas guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or its successor that are secured by the obligations in which the District may invest under the Investment Act.
7. Certificates of Deposit (Out-of-State) issued by one or more federally insured depository institutions, wherever located – but arranged through a depository institution that has its main office or a branch office in Texas. (Each certificate of deposit's principal and interest is fully insured by US.)

E. Notwithstanding anything to the contrary provided above, the following may not be used as Collateral and are not authorized as investments for the District under the Investment Act:

1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
3. Collateralized mortgage obligations that have a final stated maturity date of greater than 10 years; or
4. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

#### Section 6.03. Diversification.

The Investment Officer may invest up to 100% of the funds of the District in any investment instrument authorized in this Policy.



ARTICLE VII  
AUTHORIZED INVESTMENTS

Section 7.01. Authorized Investments.

Unless specifically prohibited by law or elsewhere by this Policy, District monies in any of its fund groups may be invested and reinvested only in the following types of Investments:

1. Obligations of the U.S. or its agencies and instrumentalities. Not to exceed 2 years to stated maturity.
2. Certificates of deposit issued by a depository institution that has its main office or a branch office in Texas guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or its successor that are secured by the obligations in which the District may invest under the Investment Act. Not to exceed one year to stated maturity. Collateral shall be provided in accordance with this Policy.
3. Certificates of Deposit (Out-of-State) issued by one or more federally insured depository institutions, arranged through a depository institution that has its main office or a branch office in Texas. Not to exceed one year to stated maturity. Collateral shall be provided in accordance with this Policy.
4. Investment pools that: a) meet the requirements of Chapter 2256.016 of the Public Funds Investment Act; b) are rated no lower than AAA or an equivalent rating by at least one nationally recognized rating service; and c) are authorized by Board resolution.
5. Certificates of Deposit obtained through a depository institution or broker that has its main office or a branch office in Texas and that contractually agrees to place the funds in federally insured depository institutions in accordance with the conditions prescribed in Section 2256.010(b) of the Public Funds Investment Act. Not to exceed one year to stated maturity. Collateral shall be provided in accordance with this Policy.

Section 7.02. Prohibited Investments.

Notwithstanding anything to the contrary stated herein, no funds of the District may be invested in the following or in any other type of investment prohibited by the Investment Act or other applicable law:

1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal (IO's);

2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest (PO's);
3. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
4. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index (inverse floaters).

**ARTICLE VIII**  
**INVESTMENT STRATEGIES**

**Section 8.01. Investment Strategy for the Operating Fund.**

Funds in the Operating or General Account shall be invested to meet the operating requirements of the District as determined by the annual operating budget prepared by the General Manger and adopted by the Board. The District's investment strategy for this fund shall be to invest such funds as to accomplish the following objective, which are listed in the order of importance:

1. Understanding of the suitability of the investment to the financial requirements of the District;
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;
5. Diversification of the investment portfolio; and
6. Yield.

**Section 8.02. Investment Strategy for Special Funds.**

Special Funds shall be invested to meet the operating requirements of the District as determined by the annual operating budget adopted by the Board or as determined by the Board. The District's investment strategy for this fund shall be to invest such funds to accomplish the following objectives, which are listed in the order of importance.

1. Understanding of the suitability of the investment to the financial requirements of the District;

2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;
5. Diversification of the investment portfolio; and
6. Yield.

It shall be the policy of the District that Special Funds shall not be invested for longer than thirteen (13) months. Funds placed in demand, savings, or time deposits shall be insured or secured as provided in the Policy.

## ARTICLE IX

### Section 9.01. Miscellaneous.

A. Checks/Drafts: All checks, drafts, notes, or other orders for the payment of money issued in the name of the District shall be signed by such officers or employees of the District as shall from time to time be authorized by resolution of the Board.

B. Depositories: All funds of the District except petty cash shall be deposited from time to time to the credit of the District in such banks or accounts as the Board may, from time to time, designate, and upon such terms and conditions as shall be fixed by the Board. The Board may, from time to time, authorize the opening and maintaining of general and special accounts within any such depository as it may designate, and may make such special rules and regulations with respect thereto as it may deem expedient.

### Section 9.03. Superseding Clause.

This Policy supersedes any prior policies adopted by the Board of Directors regarding investment or securitization of District Funds.

### Section 9.04. Open Meeting.

The Board officially finds, determines, and declares that this Investment Policy was reviewed, carefully considered, and adopted at a meeting of the Board, and that a sufficient written notice of the date, hour, place, and subject of this meeting was posted at a place convenient to the public in Montgomery County for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, and that this meeting had been open to the public as required by law at all times during which this Policy

was discussed, considered and acted upon. The Board further ratifies, approves, and confirms such written notice and the contents and posting thereof.

## ARTICLE X

### Section 10.01. Performance Standards

The District's investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio shall be designed with the objective of obtaining a rate of return through budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow requirements of the District.

### Section. 10.02. Performance Benchmark

It is the policy of the District to purchase investments with maturity dates coinciding with cash flow needs. Through this strategy, the District shall seek to optimize interest earnings utilizing allowable investments available on the market at that time. Market value will be calculated on a quarterly basis on all securities owned and compared to current book value. The District's portfolio shall be designed with the objective of regularly meeting the average rate of return on U.S. Treasury Bills at a maturity level comparable to the District's weighted average maturity in days.

Exhibit A

**CERTIFICATE OF COMPLIANCE FROM SELLERS OR INVESTMENTS**  
**AS REQUIRED BY THE PUBLIC FUNDS INVESTMENT ACT**

To: Lone Star Groundwater Conservation District

From: \_\_\_\_\_,  
[Name of the person offering or the "qualified representative of the business organization" offering to engage in an investment transaction with the District] [Office such person holds]

of \_\_\_\_\_ (the "Business Organization")  
[Name of financial institution, business organization or investment pool]

Date: \_\_\_\_\_, 20\_\_

In accordance with the provisions of Chapter 2256 of the Texas Government Code, I hereby certify that:

1. I am an individual offering to enter into an investment transaction with the District or a "qualified representative" of the Business Organization offering to enter into an investment transaction with the District, as applicable, as such terms are used in the Public Funds Investment Act, Chapter 2256, Texas Government Code, and that I meet all requirements under such Act to sign this Certificate.
2. I or the Business Organization, as applicable, anticipate selling to the District investments that comply with the District's Investment Policy and the Investment Act (collectively referred to herein as the "Investments") dated \_\_\_\_\_, 20\_\_ (the "Investment Policy").
3. I or a registered investment professional that services the District's account, as applicable, have received and reviewed the Investment Policy, which the District has represented is the complete Investment Policy of the District now in full force and effect. The District has further acknowledged that I or the Business Organization, as applicable, may rely upon the Investment Policy until the District provides me or the Business Organization, as applicable, with any amendments to or any newly adopted form of the Investment Policy.
4. I or the Business Organization, as applicable, have/has implemented reasonable procedures and controls in an effort to preclude investment transactions between the District and me



or the Business Organization, as applicable, that are not authorized by the Investment Policy, except to the extent that this authorization is dependent upon an analysis of the District's entire portfolio or requires an interpretation of subjective investment standards.

5. I or the Business Organization, as applicable, have/has reviewed or will review prior to sale, the terms, conditions and characteristics of the investments to be sold to the District and determined (i) that each of the Investments is an authorized investment for local governments under the Investment Act and (ii) each of the Investments is an authorized investment as to whether any limits on the amount of District monies to be invested in the Investments exceeds or in any way violates the Investment Policy.
6. The Business Organization makes no representations or guarantees regarding the prudence, reasonableness or adequacy of the Investment Policy.
7. The Business Organization has attached hereto, for return to the District, or will provide a prospectus or disclosure document for each of the Investments other than certificates of deposit and direct obligations of the United States
8. This Business Organization does not boycott the State of Israel and will not boycott the State of Israel during the term of this contract.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Investments, other than certificates of deposit, are not FDIC insured, are not deposits or other obligations of me, the Business Organization or any of its affiliates, and are subject to investment risks, including possible loss of the principal amount invested.**

## APPENDIX A

### LSGCD INVESTMENT POLICY REVISION/AMENDMENTS

Amended – 07.14.15	Remove references to performance benchmarks
Amended – 07.14.15	Update and include Exhibit “A” – Qualified Brokers
Reviewed – 08.30.16	No recommended changes
Re-adopted – 09.13.16	Updated
Amended – 10.10.17	Section 5.02 Restated requests for bids must be in writing. Removed “orally”.
Amended – 08.14.18	Updated to include Article X. Benchmarks may be a useful where investment income exceeds the benchmark as an indication of unacceptably high risk.
Amended – 08.14.18	Updated to include Section 2270.002 of the Texas Government Code statutory requirements that business contacts do not boycott the State of Israel and will not boycott the State of Israel during the term of any contract with the District.
Reviewed – 08.13.19	No recommended changes.



## Exhibit "E"

910 West Avenue, Suite 15  
Austin, Texas 78701  
O (512) 535-0742  
F (512) 233-5917  
stacey@staceyreese.law

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August 9, 2019

Mr. Jeff Walker  
Executive Administrator  
Texas Water Development Board  
1700 North Congress Avenue  
Austin, Texas 78701-3231

Via E-mail & Hand Delivery

Re: Lone Star Groundwater Conservation District's Appeal of the Executive Administrator's Decision Not to Approve the District's Management Plan

Dear Mr. Walker,

Enclosed please find the Lone Star Groundwater Conservation District's ("District") Appeal of your decision not to approve the District's Management Plan. The enclosed points of appeal have been provided in both paper and electronic format. Please let me know when the Board plans to hear the appeal and please provide me with a copy of any response you prepare in advance of the hearing.

Sincerely,

A handwritten signature in black ink that reads 'Stacey V. Reese'.

Stacey V. Reese  
Legal Counsel for the District

cc (e-mail): John T. Dupnik, P.G. Deputy Executive Administrator  
Natalie Ballew, GIT, Groundwater  
Stephen Allen, P.G., Groundwater  
Joe Reynolds, Attorney, TWDB  
Toby Baker, Exec. Director, Texas Commission on Environmental Quality  
Abiy Berehe, Texas Commission on Environmental Quality  
Peggy Hunka, Texas Commission on Environmental Quality  
Ms. Samantha Reiter, Interim General Manager, Lone Star GCD  
Board of Directors for Lone Star GCD (by separate e-mail)

Enclosures

LONE STAR GROUNDWATER	§	
CONSERVATION DISTRICT'S	§	
APPEAL OF THE TEXAS WATER	§	PURSUANT TO TEX. WATER
DEVELOPMENT BOARD'S	§	CODE § 36.1072
EXECUTIVE ADMINISTRATOR'S	§	
DECISION NOT TO APPROVE THE	§	
MANAGEMENT PLAN	§	

<p><b>LONE STAR GROUNDWATER CONSERVATION DISTRICT'S APPEAL OF THE TEXAS WATER DEVELOPMENT BOARD'S EXECUTIVE ADMINISTRATOR'S DECISION NOT TO APPROVE THE DISTRICT'S MANAGEMENT PLAN</b></p>
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TO MR. JEFF WALKER, Executive Administrator of Texas Water Development Board ("Executive Administrator"), 1700 N. Congress Ave., Austin, TX 78701

Pursuant to Tex. Water Code § 36.1072 and 31 Tex. Admin. Code §§ 356.50-356.57 and after giving timely notice of intent to appeal,<sup>1</sup> Lone Star Groundwater Conservation District ("District") appeals the Texas Water Development Board's ("TWDB") Executive Administrator's decision not to approve the District's management plan and submits these points of appeal addressing each of the reasons for denial of approval of the plan.

**I. SUMMARY OF APPEAL AND REQUESTED RELIEF**

1. The Executive Administrator determined the District's March 12, 2019 management plan ("Management Plan") was not administratively complete (and therefore, not approved) because the plan does not include the 2010 desired future conditions applicable to the District ("2010 DFCs") and corresponding 2010 modeled available groundwater ("2010 MAGs") from the first round of joint planning (collectively, "2010 Information"). Instead, and per TWDB's prior instructions and pre-

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<sup>1</sup> Ex. A-1, A-2. This appeal is one of first impression for TWDB and subject to *de novo* judicial review. Tex. Water Code § 36.1072(f).

review comments, the District included in its plan the 2016 desired future conditions applicable to the District (“2016 DFCs”) and the corresponding 2016 modeled available groundwater (“2016 MAGs”) from the most recently completed second round of joint planning (collectively, “2016 Information”). Even though the 2016 DFCs were determined to be no longer reasonable, Chapter 36 of the Texas Water Code (“Chapter 36”) and 31 Tex. Admin. Code §§ 356.50-356.57 (“TWDB Rules”) require the District to include the most recent DFCs and MAGs (here, the 2016 Information) with an explanation as to their applicability and dictate that the Executive Administrator shall approve the plan.

2. The Executive Administrator’s decision, while alarming and blatantly contrary to TWDB’s recommendations based on the District’s known unique circumstances, also exceeds TWDB’s statutory authority and results in prohibited conduct. Chapter 36 does not authorize TWDB to reinstate the 2010 DFCs (which were superseded upon adoption of the 2016 DFCs), as the Legislature granted the authority to determine DFCs exclusively to the districts in the groundwater management areas (GMAs). Not only does Chapter 36 give TWDB zero authority to reinstate DFCs, it prohibits reinstatement of lapsed DFCs by any entity even the districts in the GMAs. His novel, contradictory decision to force reinstatement of expired DFCs yields inconsistent (and frankly, absurd) scientific, legal, and policy results, and is consequently, unreasonable.

3. For these reasons, the District respectfully requests that TWDB reverse the Executive Administrator’s decision and deem the District’s Management Plan, containing the 2016 Information, administratively complete.



## II. FACTUAL AND PROCEDURAL BACKGROUND

4. The following factual and procedural background on the District's regulatory plan and adoption of the 2010 and 2016 DFCs describes the backdrop within which the Management Plan was created, adopted and submitted. Understanding how and why the Management Plan (currently denied approval) was developed and adopted with the language and information it currently contains is critical to evaluating TWDB's limited authority, the implications of the Executive Administrator's decision, and why his decision must be reversed.

### **A. The District's Entire Regulatory Program Was Based on a 64,000 AFY Pumping Cap Calculated Without Science and Never Authorized Under Chapter 36.**

5. Shortly after the District was formed in 2001, the District adopted an initial management plan to manage groundwater in a sustainable manner designating the groundwater availability as the amount of effective annual recharge in the District. The District then determined that recharge to the entire Gulf Coast Aquifer system (Chicot, Evangeline and Jasper aquifers) in the District was estimated by multiplying 1.1 inches per year times the area of the county without regard to actual hydrologic function of the aquifers involved.<sup>2</sup>

6. After determining the total amount of groundwater available for use in Montgomery County was 64,000 acre-feet per year (AFY) based solely on recharge within the county boundary, the District then developed a regulatory plan based exclusively on that conclusion. The authorized production at the time (78,000 AFY) had

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<sup>2</sup> See original management plan adopted 10/14/2003, pp. 3,7-8, publicly available on the District's website, <https://www.lonestargcd.org/district-rules-1>. This information is incorporated by reference as if set forth in full herein. Ex. A-39, pp. 3, 8-9.

already exceeded the 64,000 AFY “available groundwater” and the water demand in Montgomery County was projected to increase significantly over the next forty years. In December 2006, the District formally adopted and began implementing a multi-phased regulatory plan that called for specific large users to cut back usage by 30% by January 1, 2016, to ensure production would not exceed the 64,000 AFY cap (“Reduction Rule”).<sup>3</sup>

7. The District developed the 64,000 AFY available groundwater number and used it as a pumping limit without utilizing scientific analysis or studies even though there were scientific methods routinely employed to calculate recharge<sup>4</sup> and the District was required to use the best available data in developing its management plan.<sup>5</sup> The sustainable recharge rate of 64,000 AFY with a contributing pumping zone comprised of the county boundary, although historically claimed in the District’s records, has not been documented in any scientific paper or study that has been signed and sealed by a professional groundwater scientist.<sup>6</sup> Further, the approach was never authorized in Chapter 36 after the institution of the DFC joint planning process in 2005. In 2005, the Legislature enacted House Bill 1763 requiring GMAs to establish what the aquifers

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<sup>3</sup> See management plan re-adopted 10/14/2008, p. 19, and District Regulatory Plan Phase II(B), pp. 3-4, both of which are publicly available on the District’s website, <https://www.lonestargcd.org/district-rules-1>. This information is incorporated by reference as if set forth in full herein.

<sup>4</sup> Ex. A-39, pp. 2, 8-9.

<sup>5</sup> Tex. Water Code § 36.1071(b) (2001 version) (“After January 5, 2002, a district management plan, or any amendments to a district management plan, shall be developed by the district using the district’s best available data and forwarded to the regional water planning group for consideration in their planning process.”). The requirement to use best available data has continued through all subsequent versions of the statute.

<sup>6</sup> Ex. A-39, pp. 2, 8-9.

should look like in the future (i.e., DFCs) and mandating that the managed available groundwater be based on those DFCs.<sup>7</sup>

8. Before H.B. 1763 and the institution of GMAs and joint planning, many districts, Lone Star GCD included, used recharge within a district's county boundary to determine available groundwater based on misconceived regional water planning constructs.<sup>8</sup> This approach to groundwater management was problematic because aquifers do not begin and end at county lines, and prudent management necessarily requires an aquifer-based approach. HB 1763 and other legislation reflected the understanding that aquifer wide management was necessary therefore mandating districts within a management area to engage in joint planning to *first* determine the future conditions of the aquifer and *then use those condition(s) to determine the available groundwater*. HB 1763 gave districts in a GMA until September 1, 2010 to determine the desired future condition of the aquifers.

**B. The 2010 DFCs Were Engineered to Yield a MAG of 64,000 AFY and Adopted Under An Old Statute That Did Not Require Use of the Best Available Science and Effectively Provided No Due Process.**

9. Notwithstanding the noted and obvious problems with using pre-determined MAG calculations based on recharge in a single county boundary when the joint planning process mandates districts to determine the DFCs first, the District pursued 64,000 AFY as the District's available groundwater in the first round of joint planning by proposing that the District's management area ("GMA 14") adopt a DFC applicable to the District that would yield 64,000 AFY of available groundwater. The GMA 14

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<sup>7</sup> Act of May 30, 2005, 79th Leg., R.S., ch. 970 (H.B. 1763), § 8.

<sup>8</sup> Ex. A-3, R. Petrossian, C. Ridgeway, & A. Donnelly, *Balancing the Groundwater Checking*

districts approved DFCs applicable to the District that yielded a MAG of 64,000 AFY even though the DFC, by statute, was to first be determined on a GMA wide level and then the available groundwater calculated specifically based on that DFC.<sup>9</sup>

10. Presumably, the GMA 14 districts continued on this course because the District had built its entire regulatory plan on the 64,000 AFY groundwater availability number and had already been implementing the plan requiring significant cutbacks needed to achieve the DFC that was reverse engineered to deliver that level of available groundwater. Under this flawed approach, the District's 64,000 AFY pumping limit became a self-fulfilling mandate for years to come.

11. It is undisputed that the GMA 14 districts used a backward approach of plugging the desired pumping into the model and then adopting the DFC that correlated with that pumping.<sup>10</sup> The GMA 14 districts used this approach for all DFCs because they concluded that "adjust[ing] the pumpage to match a particular DFC would be very work intensive."<sup>11</sup>

12. At the time the 2010 DFCs were adopted, the Legislature authorized a petition of the DFCs to TWDB where, if successful, TWDB could then request a district to "reconsider" a DFC.<sup>12</sup> Importantly, TWDB did not (and still does not) have the

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*Account Through House Bill 1763* (April 3, 2007), pp. 1-3.

<sup>9</sup> See management plan re-adopted 11/12/2013, pp. 8-12, which is publicly available on the District's website, <https://www.lonestargcd.org/district-rules-1>. This information is incorporated by reference as if set forth in full herein. The District adopted the approved DFCs applicable to the District.

<sup>10</sup> GMA 14's 2010 DFC Submission Packet is publicly available on TWDB's website, at <http://www.twdb.texas.gov/groundwater/dfc/2010jointplanning.asp>. This information is incorporated by reference as if set forth in full herein.

<sup>11</sup> Ex. A-4, City of Conroe Letter p. 2, and minutes from GMA 14 June 26, 2013 meeting, p. 3.

<sup>12</sup> Tex. Water. Code § 36.1083, Acts 2011, 82nd Leg., ch. 1233 (S.B. 600), § 17, repealed by Acts

authority to determine the DFCs. The 2010 DFCs were not petitioned under the old process.

13. Notably, in 2011, the Legislature adopted a significant rewrite of the statutory provisions governing the joint planning process. After the Sunset Commission and the Texas Legislature recognized significant problems with the 2010 DFC process across the state, the Legislature passed S.B. 660, which mandated the districts to consider new scientific and technical factors and prepare an explanatory report to document the science and rationale for the adopted DFCs.<sup>13</sup> S.B. 660 also mandated that adopted DFCs “must provide a balance between the highest practicable level of groundwater and the conservation, preservation, protection, recharging and prevention of waste of groundwater and control of subsidence in the management area.” The 82nd Legislature also changed the term “managed available groundwater,” which acted as a cap on total production, to “modeled available groundwater,” which was not a cap and was now one of several factor districts consider in managing production on a long-term basis.<sup>14</sup>

14. After much criticism that the “appeal” process, involving TWDB’s ability to request a district to reconsider a DFC, effectively deprived due process, the 84th Legislature took action. In 2015, the Legislature amended section 36.1083 requiring a DFC petition to be heard as a contested case by the State Office of Administrative

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2015, 84th Leg., Ch 993 (H.B. 200), § 6.

<sup>13</sup> Acts 2011, 82nd Leg., ch. 18 (S.B. 660) § 17.

<sup>14</sup> Tex. Water Code § 36.1132, Acts 2005, 79th Leg., ch 970 (H.B. 1763) (2005 version referring to “managed available groundwater); Acts 2011, 82nd Leg., ch. 18 (S.B. 737), § 4 (2011 version changing terminology to “modeled available groundwater” and making MAG one consideration); *See also* Tex. Water Code § 36.1084.



Hearings (“SOAH”).<sup>15</sup> The 84th Legislature also amended section 36.0015 to define “best available science” and mandate that GCDs use the best available science in carrying out their duties.<sup>16</sup>

15. As stated below in section II.D., the District’s Reduction Rule (and entire regulatory plan) on which the 2010 DFCs were based was later called into question and ultimately found to be statutorily invalid by a court.

**C. The 2016 DFCs, Also Engineered to Yield a 64,000 AFY MAG, Were Successfully Petitioned Under the New Statute Providing Due Process, Yet GMA 14 Has Refused to Revise the 2016 DFCs Despite a Statutory Mandate to Do So.**

16. During the second round of joint planning, the GMA 14 districts adopted DFCs for aquifers within GMA 14 on April 29, 2016.<sup>17</sup> On August 9, 2016, the District adopted the approved DFCs applicable to the District, which were likewise based on the 64,000 AFY MAG and substantially similar to the 2010 DFCs.<sup>18</sup> The Cities of Conroe and Magnolia timely filed a petition on December 2, 2016, appealing the reasonableness of the 2016 DFCs. Quadvest, L.P., timely filed a petition on December 6, 2016,

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<sup>15</sup> Tex. Water Code § 36.1083, Acts 2015, 84th Leg., ch 993 (H.B. 200), §§ 4, 6.

<sup>16</sup> Tex. Water Code § 36.0015, Acts 2015, 84th Leg., ch 993 (H.B. 200)(subsection(a) "best available science" means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.")(subsection(b) mandating the districts to use the best available science). The definition and mandate have not changed.

<sup>17</sup> Ex. A-5, Resolution for the Approval of Desired Future Conditions for All Aquifers in Groundwater Management Area 14 dated April 29, 2016.

<sup>18</sup> Ex. A-6, Resolution for Adoption of the Desired Future Conditions For the Gulf Coast Aquifer that Apply to the Lone Star Groundwater Conservation District dated August 9, 2016.

appealing the reasonableness of the 2016 DFCs. The District provided TWDB with copies of the petitions on December 12 and December 14, 2016, respectively.<sup>19</sup>

17. On December 15, 2016, and after receiving the two petitions of the 2016 DFCs, the Executive Administrator provided the District's General Manager with the 2016 MAGs (GAM Run 16-024 MAG) based on the 2016 DFCs. The Executive Administrator reminded the General Manager that the "MAGs reported in the regional water plans and groundwater management plans must not be in conflict."<sup>20</sup>

18. The District contracted with SOAH to conduct a hearing on the merits of the DFC petitions, and Administrative Law Judge Casey Bell consolidated the cases and scheduled the merits hearing for November 6-10, 2017.<sup>21</sup> On April 10, 2017, TWDB prepared a scientific and technical analysis of the DFCs and the Executive Administrator delivered the report to Judge Bell to be used at the merits hearing.<sup>22</sup> TWDB designated various staff, including Mr. Larry French, as expert witnesses, and TWDB, as a party, if requested.<sup>23</sup>

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<sup>19</sup> GMA 14's entire 2016 DFC submission packet, TWDB MAG information and the petitions of the 2016 DFCs are publicly available on TWDB's website, at <http://www.twdb.texas.gov/groundwater/dfc/2016jointplanning.asp>. This information is incorporated by reference as if set forth in full herein.

<sup>20</sup> Ex. A-7, Letter f. J. Walker to K. Jones dated Dec. 15, 2016.

<sup>21</sup> All filings in the consolidated DFC Petitions, SOAH Docket No. 958-17-3121, are publicly available on SOAH's website, <https://cis.soah.texas.gov/dmwebbasic/>. All filings in the proceeding are incorporated by reference as if set forth in full herein.

<sup>22</sup> This analysis is publicly available on TWDB's website at [http://www.twdb.texas.gov/groundwater/petitions/doc/lsgcd/TWDB%20Technical%20Evaluation%20Report%2004\\_10\\_17.pdf?d=-1589](http://www.twdb.texas.gov/groundwater/petitions/doc/lsgcd/TWDB%20Technical%20Evaluation%20Report%2004_10_17.pdf?d=-1589). This information is incorporated by reference as if set forth in full herein.

<sup>23</sup> This letter is publicly available on TWDB's website at [http://www.twdb.texas.gov/groundwater/petitions/doc/lsgcd/TWDB%20Letter%20to%20SOAH%2004\\_10\\_17.pdf?d=-1589](http://www.twdb.texas.gov/groundwater/petitions/doc/lsgcd/TWDB%20Letter%20to%20SOAH%2004_10_17.pdf?d=-1589). This information is incorporated by reference as if set forth in full herein.

19. On October 10, 2017, during the pendency of the DFC appeal and before the merits hearing, the District's prior Board of Directors received the results of the three-year Strategic Water Resources Planning Study (the "Planning Study") conducted by LBG-Guyton Associates that it was commissioned to do beginning in October 2014.<sup>24</sup> The Planning Study evaluated the impacts of the District's groundwater reductions to local aquifers and concluded that additional groundwater withdrawals could be achieved if the District allowed measured aquifer declines. The prior Board approved the study and: 1) adopted a new policy goal that allowed for measured aquifer level declines over time; 2) adopted groundwater availability model "Run D" from the final report for Task 3 of the Planning Study as the District's recommended model scenario, which increased allowable pumping volumes from 64,000 AFY to 100,000 AFY through 2070 and included the resulting aquifer conditions; and 3) recommended that the District's General Manager and consultants present the results of the Planning Study, including the prior Board's recommendation for Run D, to GMA 14 with a request that Run D be considered in the joint planning process as either an amendment to the DFCs previously adopted in 2016 or as a new proposal. The hearing on the merits scheduled to begin on November 6, 2017 was continued and ultimately cancelled.<sup>25</sup>

20. On November 6, 2017,<sup>26</sup> the District's prior Board entered into a settlement agreement and an Agreed Proposal for Decision with the Cities of Conroe and Magnolia

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<sup>24</sup> The Planning Study is publicly available on the District's website at <https://static1.squarespace.com/static/58347802cd0f6854e2f90e45/t/5a0dabef71c10b9cec9e1498/1510845426777/Task+3+Strategic+Planning+Summary+Results.pdf>. This information is incorporated by reference as if set forth in full herein.

<sup>25</sup> Ex. A-8, Minutes and Resolution from District's Meeting dated Oct. 10, 2017.

<sup>26</sup> Ex. A-9, Minutes from District's Meeting dated Nov. 6, 2017.

ending the contested case on the reasonableness of the 2016 DFCs.<sup>27</sup> The Agreed Proposal for Decision, prepared by Judge Bell, included the following specific Findings of Fact.

- a. Findings consistent with the District's actions approved on October 10, 2017 regarding the Planning Study.
- b. "Based on results of the Strategic Water Resources Planning Study and the District's Board of Directors actions, the District's Board of Directors changed its policy goal to move away from 'sustainability,' which is one of the primary bases for the DFCs that are the subject of the petitions in this proceeding, to a groundwater management policy and goal that allows measured aquifer level declines over time."
- c. "Because the District Board of Directors has changed its policy goal for aquifer management as set forth above and has already voted unanimously to pursue changes to the DFCs that are the subject of the DFC appeal, those DFCs are no longer reasonable."

21. On November 6, 2017, the District signed a Final Order adopting in full Judge Bell's Proposal for Decision and declaring the DFCs no longer reasonable.<sup>28</sup> The District's order instructed the General Manager to transmit a copy of the Final Order to all districts in GMA 14 and convey to those districts the Board's request that GMA 14 promptly convene as required by section 36.1083(p) & (q) to begin the process of adopting new or amended DFCs applicable to the District. The District then submitted a request on November 20, 2017, to the GMA 14 districts seeking a change in the 2016 DFCs for the aquifers to be consistent with the aquifer conditions as modeled in the "Run D" scenario approved by the prior Board of Directors.<sup>29</sup>

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<sup>27</sup> Ex. A-10, Agreed Proposal for Decision. Quadvest, L.P. did not object to the agreement or proposal for decision.

<sup>28</sup> Ex. A-11, Final Order dated Nov. 6, 2017.

<sup>29</sup> Ex. A-12, Letter from K. Jones to the GMA 14 district representatives dated November 20, 2017.

22. On December 8, 2017, the voting district representatives of GMA 14, unanimously approved taking up “Run D” for formal consideration as new DFCs for the third five-year joint planning cycle of DFCs, but would not support a more surgical approach to amend only the District’s second-cycle DFCs.<sup>30</sup> At least one representative voiced concern that a change in the DFC for the District would, by necessity, require new DFCs to be adopted for their district, as well. This would require a full rework of the necessary explanatory report.<sup>31</sup> Further, in response to Conroe’s January 2018 request for the GMA 14 districts to provide an update on the DFCs applicable to the District in light of Judge Bell’s proposal and the District’s final order, Bluebonnet GCD, responding on behalf of the GMA 14 districts, reiterated that “DFCs cannot be changed in isolation,” and any change in a DFC would require following the process in Section 36.108 including reanalyzing the statutory factors, notice, hearing, and an explanatory report, etc.<sup>32</sup> The Bluebonnet GCD letter further states that the GMA 14 districts contend they have a right to adopt new DFCs as part of changing the DFCs applicable to the District, and they must evaluate the impact of changing one DFC on the other DFCs from adjoining counties.

23. The District continued to work with the GMA 14 district representatives in early 2018 to request that they take up the “Run D” request only as an amendment to the second-cycle DFCs on an expedited basis. On March 27, 2018, the GMA 14 district representatives voted down a motion to consider “Run D” only as an amendment to the second-cycle DFCs, but unanimously approved “Run D” for formal consideration both

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<sup>30</sup> Ex. A-13, Minutes from GMA 14 Meeting dated Dec. 8, 2017.

<sup>31</sup> Ex. A-14, Minutes from GMA 14 Meeting dated Jan. 24, 2018.

(1) in response to the District's request from the appeal of the second joint planning cycle DFCs, and (2) to develop the third cycle DFCs.<sup>33</sup>

24. TWDB representatives, Mr. Larry French and/or Mr. Robert Bradley, attended the monthly GMA 14 meetings including those from December 2017 (the meeting immediately following resolution of the DFC petitions) and April 2018 (the meeting immediately before TWDB sent out its renewal e-mail on the District's management plan). During each of these meetings, the DFCs applicable to the District were extensively discussed including GMA 14's refusal to revise just the DFCs applicable to the District and GMA 14's decision to consider Run D in the third round of planning when it considered all other DFCs.<sup>34</sup>

25. On February 21, 2018, the City of Conroe's outside counsel, Mike Powell, met with TWDB's Larry French and Kendal Kowal regarding the City's concerns that GMA 14 is taking no action on revising immediately the DFCs applicable to the District and instead has decided to address the District's DFCs when it addresses all DFCs in the third round of planning. Mr. Powell also wrote TWDB's French a letter on the matter in anticipation of the meeting.<sup>35</sup> TWDB took no action in response to the letter or the meeting.

26. On May 9, 2018, and with full knowledge of the resolution of the 2016 DFC petitions and GMA 14's refusal to address the DFCs applicable to the District until the third round of planning, TWDB's Stephen Allen e-mailed the "Data packet for the Lone

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<sup>32</sup> Ex. A-15, Letter from Z. Holland with Bluebonnet GCD to Mayor T. Powell dated Feb. 6, 2018.

<sup>33</sup> Ex. A-16, GMA Resolution dated March 27, 2018.

<sup>34</sup> Ex. A-13 through A-14 and Ex. A-17 through A-19.

<sup>35</sup> Ex. A-20, Letter from M. Powell to L. French dated Feb. 19, 2018



Star GCD groundwater management plan” to the District. Allen’s e-mail instructs the General Manager to use values from the 2017 Texas State Water Plan, the “recently issued GAM Run 17-023” and the MAG values from “GAM Run 16-024 MAG.” GAM Run 16-024 MAG is the same information the Executive Administrator previously provided to the General Manager on December 15, 2016 when he reminded her that the MAGs in the regional water plans and groundwater management plans must not conflict. Importantly, TWDB’s Allen instructs the District’s General Manager to use the 2016 Information (not the 2010 Information).<sup>36</sup>

27. After the newly elected board took office in November 2018, it prepared a statement to GMA 14 on the status of the DFCs applicable to the District, which included defining a common reservoir, and that the Board no longer supported Run D for the third round of planning.<sup>37</sup> When the District adopted the Management Plan in March 2019, GMA 14 had begun initial studies of the nine statutory factors the district representatives are statutorily required to consider before adopting new DFCs for the third planning cycle.<sup>38</sup> Under the current schedule, GMA 14 will have proposed DFCs for adoption by May 1, 2021.<sup>39</sup>

28. In June 2019, the District re-urged its request for the GMA 14 district representatives to revise the 2016 DFCs and/or expedite round 3 planning.<sup>40</sup> GMA 14 is

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<sup>36</sup> Ex. A-21, E-mail and 5 attachments from S. Allen to K. Jones dated May 9, 2018.

<sup>37</sup> Ex. A-22, Letter from H. Hardman to GMA 14 dated Jan. 30, 2019.

<sup>38</sup> In section seven of the Management Plan, the District explains the DFC petitions and resolution, and the District’s continued efforts to adopt reasonable DFCs through the GMA 14 joint planning process.

<sup>39</sup> Ex. A-23, GMA 14’s current schedule for adoption of DFCs.

<sup>40</sup> Ex. A-23, GMA 14’s expedited schedule for third round of joint planning and Agenda for June 26, 2019 meeting. GMA 14 has not followed this expedited schedule, which projected the

scheduled to hear the District's request at its August meeting.<sup>41</sup> Importantly, at no point during the process, did the GMA 14 representatives vote to re-adopt the 2010 DFCs as the DFCs applicable to the District.

**D. The District's Regulations, Which Form the Basis for Both the 2010 and 2016 DFCs, Were Deemed Statutorily Invalid from Initial Adoption.**

29. In August 2015, the District, the General Manager and then directors were sued by the City of Conroe, Quadvest, LP, and other investor-owned utilities (collectively, "Plaintiffs") over the validity of the Reduction Rule. In September 2018, Senior District Judge Lamar McCorkle of the 284<sup>th</sup> District Court in Montgomery County granted a partial summary judgment holding that the District's Reduction Rule is invalid and outside the District's authority granted by the Legislature.<sup>42</sup> The old Board timely filed a permissive interlocutory appeal of the summary judgment order.<sup>43</sup>

30. In January 2019, the new board voted to enter into a Compromise and Settlement Agreement with the Plaintiffs to end the protracted, expensive litigation and accept Judge McCorkle's order declaring the regulations void and unenforceable in a final judgment. On May 17, 2019, the Honorable Judge McCorkle signed the Final Judgment declaring that the Reduction Rules in the district's regulatory plan were adopted "without legal authority and consequently are, and have been, unlawful, void and

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adoption of final DFCs in spring 2019. At the June 2019 meeting, GMA 14 just now considered the hydrological conditions including TERS that was slated for consideration back in May 2018 under the expedited schedule. It is unclear why GMA 14 deviated from the expedited schedule.

<sup>41</sup> Ex. A-23, GMA 14 's August 15, 2019 agenda.

<sup>42</sup> Ex. A-24, Order on Motion for Partial Summary Judgment.

<sup>43</sup> Ex. A-25, Notice of Appeal.

unenforceable.”<sup>44</sup> Effective from the date of the Final Judgment, the Reduction Rules have been struck from the District’s rules, regulatory plan, large volume permits, and the District no longer manages the resource in accordance with those regulations. The District is in the process of adopting new rules to replace the unlawful, void and unenforceable regulations.<sup>45</sup>

**E. The Management Plan Was Adopted Per Chapter 36, TWDB’s Instructions and Approval to Use the 2016 Information, and In Accordance with the Orders from the DFC Petitions and Reduction Rule Lawsuit.**

31. In anticipation of the District’s then management plan expiring on December 17, 2018, the District held hearings in September 2018 to adopt a new management plan.<sup>46</sup> The District received opposition to adopting a new plan when a newly elected board would be taking office in November including a letter from State Legislators asking the District to defer adoption of all major policy decisions until after the elected board took office.<sup>47</sup> The District approved a draft plan for submission to TWDB for pre-approval but delayed formal adoption until after the newly elected board took office on November 16, 2018.<sup>48</sup> The draft plan the District submitted for approval to TWDB in September included the 2016 Information but explained its applicability and that the 2016 DFCs were found to be no longer reasonable.<sup>49</sup> TWDB provided “Pre-Review

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<sup>44</sup> Ex. A-26, Final Judgment.

<sup>45</sup> Ex. A-27, Minutes from the District’s June 11, 2019 meeting.

<sup>46</sup> Ex. A-28, Minutes and Resolution from District’s September 18, 2018 meeting.

<sup>47</sup> Ex. A-29, Letter from B. Sledge to J. Walker dated Nov. 27, 2018 plus enclosures.

<sup>48</sup> Ex. A-30, Letter from K. Jones to J. Walker dated Oct. 15, 2018. This letter resubmitted the September plan that was approved at the 9/18/18 meeting and on which TWDB had previously provided comment on 9/17/18 per Ex. A-31.

<sup>49</sup> Ex. A-31, Draft management approved on Sept. 18, 2018 for submission to TWDB plus September 7, 2018 pre-review comments.

Comments” on the draft plan authorizing inclusion of the 2016 Information (and not instructing the District to include the 2010 Information).<sup>50</sup>

32. On November 20, 2018, the new Board voted to delay consideration of a management plan until it had time to get up to speed on the information and policies embodied in a new plan and to determine the policies of the new board prior to re-adoption. On November 27, 2018, the District’s then General Counsel notified the Executive Administrator of the Board’s decision and its intent to revisit the matter in early 2019.<sup>51</sup> TWDB’s Executive Administrator responded on December 14, 2018 acknowledging the “challenge of developing and adopting a groundwater management plan during the period of transition between an appointed and newly-elected Board of Directors for the District.”<sup>52</sup>

33. In December 2018, the District hired new General Counsel.<sup>53</sup> After hiring new technical consultants in January 2019, the new Board immediately undertook the task of reviewing the previously adopted plans and the current draft plan, and began developing a new plan for re-adoption incorporating the final orders from the 2016 DFC and Reduction Rule litigation.<sup>54</sup>

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<sup>50</sup> Ex. A-31, e-mail chain dated August through September 2018 by and between W. Oliver, K. Jones and S. Allen, and TWDB’s “Lone Star GCD Groundwater Management Plan Pre-Review 1 Recommendation Report 09/07/2018 (SA, DT, RB).”

<sup>51</sup> Ex. A-29.

<sup>52</sup> *Id.*

<sup>53</sup> Ex. A-32, Minutes from the District’s Meeting dated Dec. 18, 2018.

<sup>54</sup> The approved minutes from all of the District’s meetings are publicly available on the District’s website, <https://www.lonestargcd.org/meetings>. This information is incorporated by reference as if set forth in full herein.

34. After hearing and adoption by the Board on March 12, 2019, the District submitted the Management Plan to TWDB for approval in March 2019.<sup>55</sup> Similar to the District's pre-approval submission in September 2018, the District included the 2016 Information in the Management Plan and explained that the 2016 DFCs have limited applicability given they were found to be no longer reasonable and GMA 14 had taken no action to update/revise the DFCs applicable to the District.<sup>56</sup>

35. After submission, TWDB received several letters in opposition, and one in support, of the District's management plan.<sup>57</sup> The District responded to the letters opposing approval of its plan reiterating that its Management Plan complied with Chapter 36 and TWDB Rules, and approval was mandatory.<sup>58</sup>

**F. Despite the Mandate in Chapter 36 and TWDB's Instructions and Approval to Use the 2016 Information, the Executive Administrator Denied Approval for Failure to Include the 2010 Information.**

36. On May 16, 2019, the Executive Administrator notified the District that the submitted plan was not administratively complete (and therefore, not approved) because the plan did not address what TWDB has concluded are the applicable desired future conditions (the 2010 DFCs) and modeled available groundwater (the 2010 MAGs in GAM Run 10-038 MAG). The Executive Administrator acknowledged the District's explanation of the limited applicability of the 2016 DFCs since they were declared "no

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<sup>55</sup>Ex. A-33, Letter from S. Reiter to J. Walker dated March 14, 2019 with March 12, 2019 Management Plan enclosed.

<sup>56</sup> Ex. A-30, A-31, draft plan at pp. 10-11.

<sup>57</sup> Ex. A-34, Letter from J. Houston to J. Walker dated March 11, 2019, Letter from J. Stinson to J. Walker dated April 10, 2019, and Letter from M. Jones to J. Walker dated April 18, 2019.

<sup>58</sup> Ex. A-35, Letter from S. Reese to J. Walker dated April 18, 2019.

longer reasonable,” but directed the District to address the 2010 DFCs and 2010 MAGs in its management plan.<sup>59</sup>

37. The Executive Administrator offered no explanation as to why TWDB previously instructed the District to use the 2016 Information (and previously authorized use of the 2016 Information in the District’s September 2018 submission for pre-review) nor did he provide the authority on which he relied to reinstate the lapsed 2010 DFCs and require the District to include the 2010 Information.

38. The Executive Administrator’s May 16, 2019 letter of non-approval encouraged the District to take advantage of TWDB’s pre-review process prior to submitting an adopted plan.

**G. The District Submitted a Revised Draft Plan in the Pre-Review Process with the 2010 information to No Avail.**

39. On May 23, 2019, the District triggered the pre-review process by submitting a cover letter, a revised draft plan with the 2010 Information with an explanation on its applicability, and a Technical Memo from the District’s engineer and hydrogeologist.<sup>60</sup> The cover letter explained the District’s desire to engage in meaningful dialogue as to why TWDB concluded the 2010 Information should be included, if there is any version of the plan containing the 2016 Information that is acceptable, and discuss the District’s proposed language if the 2010 Information is included in the plan. The Cover Letter and the Technical Memo raised several questions and concerns if the District were to include the 2010 Information. Specifically, the District explained why it did not include

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<sup>59</sup> Ex. A-36, Letter from J. Walker to S. Reiter dated May 16, 2019.

<sup>60</sup> Ex. A-37, Letter from S. Reiter to J. Walker dated May 23, 2019 with enclosed Technical Memo and revised draft plan.



the 2010 Information in the Management Plan formally adopted and submitted as follows:

- a. The 2010 DFCs were superseded and replaced with the 2016 DFCs upon adoption, and there is no express authorization in the statute and rules for TWDB to reinstate lapsed DFCs.
- b. The 2010 DFCs were adopted under an old statutory scheme intentionally amended by the Legislature to rectify scientific and due process concerns.
- c. The 2010 DFCs were derived using an almost identical methodology as, and are substantially similar to, the petitioned 2016 DFCs declared no longer reasonable.
- d. The assumed total pumping used to create both the 2010 and 2016 DFCs was essentially identical and based on void and unenforceable rules.
- e. The District is concerned that incorporating the 2010 Information could lead to litigation by any affected person under section 36.251 and creates concerns with complying with the orders and agreements in connection with the 2016 DFC and Reduction Rule litigation.

40. In the revised draft plan with the 2010 Information, the District addressed and included the requested information but also provided an explanation as to its limited applicability given all the circumstances and its concerns.<sup>61</sup>

41. On June 24, 2019, TWDB responded to the District's pre-review submittal with required changes that made it abundantly clear the TWDB intended to unilaterally reinstate the 2010 DFCs, ignore the District's explanation on their applicability, and bind the District to manage to the 2010 DFCs until new DFCs were adopted.<sup>62</sup> Realizing the District could not comply with TWDB's request for the various technical and legal reasons, the District was left with no other alternative other than to appeal.

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<sup>61</sup> Ex. A-37, pp. 7-12 in management plan.

<sup>62</sup> Ex. A-38, TWDB's "Draft Lone Star GCD Groundwater Management Plan Pre-Review 1 Recommendation Report 6/24/19" in response to June draft plan.

### III. POINTS OF APPEAL

#### A. For Purposes of this Appeal, TWDB's Powers and Duties Under Chapter 36 Are Expressly Limited to a Review for Administrative Completeness.

42. TWDB is a state agency whose primary responsibilities are state water planning and administration of water financing for the state. TWDB's general powers and duties over water planning and administration of water financing are enumerated in Chapter 6 of the Texas Water Code.<sup>63</sup> Under Chapter 6, TWDB has general powers and duties including any incidental to the conduct of its business of state water planning and water financing. Importantly, Chapter 6 expressly limits TWDB's power and duties under other chapters of the code, including Chapter 36, to only those specifically prescribed in those respective chapters.

43. As such, under Chapter 36, TWDB has only the limited, specific powers and duties to which it is expressly authorized.<sup>64</sup> With regard to this appeal, TWDB's express and limited authority is found in sections 36.1071 and 36.1072. Section 36.1071 sets out the information that a district must include in its management plan. Section 36.1072

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<sup>63</sup> Tex. Water Code §§ 6.002, 6.011.

<sup>64</sup> Section 36.1071(c),(d) (provide technical assistance in developing a management plan; train district staff on basic data collection methodology and provide technical assistance to districts); Section 36.1072(g)(provide technical assistance and facilitate coordination between an affected person who files a complaint that district's approved management plan conflicts with the state water plan; ultimately resolve conflict if not resolved through mediation; may consolidate action with 16.053(p) complaint); 36.1072 (approve management plans as administratively complete; 36.1073 (approve amendments to management plans); 36.108(d)(3) (provide TERS); 36.108(d-4) (determine whether DFC and explanatory report submission are administratively complete); 36.108-36.1081 (provide technical staff available in non voting capacity to assist with development of DFC); 36.1083 (upon receipt of DFC petition, conduct study with scientific and technical analysis; make relevant witnesses available if requested for SOAH hearing; may assist in mediation); 36.1084; 36.001(25) (determine modeled available groundwater); 36.109; 36.120 (request collected information from districts); 36.1132 (provide estimate of exempt use); 36.160 (allocate funds and provide technical and administrative assistant to newly created districts); 36.372 (establish rules for use and administration of loan); 36.015 (designate management areas under chapter 35 ).

limits TWDB's role to mandatory approval of a management plan as administratively complete if the plan contains the information in section 36.1071(a) and (e).<sup>65</sup>

44. Critically, although TWDB has some role in the joint planning process under section 36.108, TWDB is not authorized to approve DFCs as that decision is left solely to the GMAs by a 2/3 vote after notice and hearing.<sup>66</sup> Instead, TWDB's role in joint planning is limited to providing technical support, determining whether a GMA's DFC submission is administratively complete, and providing some technical information in the DFC petition process, among other duties, not directly at issue in this appeal.<sup>67</sup>

**B. Because the Management Plan Complies with the Unambiguous Statute and Rules, the Executive Administrator was Required to Grant Approval.**

45. TWDB must approve a management plan as administratively complete, if the plan "contains the information required to be submitted under Section 36.1071(a) and (e)."<sup>68</sup> TWDB has adopted rules governing its review for administrative completeness in 31 Tex. Admin. 356.50-57 ("TWDB Rules"). The relevant requirements in section 36.1071 and TWDB Rules are the provisions relating to the DFCs and MAGs.

46. Specifically, regarding the DFCs:

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<sup>65</sup> Tex. Water Code § 36.1072(b) ("[T]he executive administrator *shall* approve the district's plan if the plan is administratively complete. A management plan is administratively complete when it contains the information required to be submitted under Section 36.1071(a) and (e).") (emphasis added).

<sup>66</sup> Tex. Water Code § 36.108(d),(d-3). This is consistent with Robert Bradley and Larry French's statements in GMA 14 meetings that the "TWDB only evaluates administrative completeness of management plans."

<sup>67</sup> Tex. Water Code § 36.108 (d-3),(d-4)(review of DFC submission packet); §36.1081(technical support during joint planning); §36.1083 (technical information during DFC petition process). See also Tex. Water Code §36.1084 (determine modeled available groundwater), §36.108(d)(3) (provide TERS).

<sup>68</sup> Tex. Water Code § 36.1072(b).

“[T]he district shall ... develop a management plan that *addresses* the following management goals, *as applicable*, .. *addressing* desired future conditions adopted by the district under Section 36.108”;<sup>69</sup> and

“[T]he management plan shall contain, *unless explained as not applicable*, ... management goals ... *addressing* the desired future conditions established pursuant to Texas Water Code § 36.108.”<sup>70</sup>

47. Specifically, regarding the MAGs, the management plan must:

“*include* estimates of ... modeled available groundwater in the district based on the desired future condition established under Section 36.108;”<sup>71</sup> and

“[T]he management plan shall contain, *unless explained as not applicable*, ... *estimates* of ... modeled available groundwater in the district as provided by the executive administrator based on the desired future conditions established under Texas Water Code § 36.108.”<sup>72</sup>

48. In sum, pursuant to section 36.1071 and the TWDB Rules, the plan must, unless explained as not applicable, contain management goals addressing the DFCs, and include estimates of the MAGs. Critically, the statute and rules do not authorize TWDB to determine what is applicable or not applicable; instead, the districts are required to include the information unless explained as not applicable at their discretion.

49. These statutes and rules are unambiguous. In determining whether a regulation is ambiguous or not, a court must carefully consider the text, structure, history and purpose of the regulation.<sup>73</sup> An agency’s opinion or alternative interpretation cannot change the plain language of a statute or render the statute ambiguous.<sup>74</sup> If the statute

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<sup>69</sup> Tex. Water Code § 36.1071(a)(8) (emphasis added).

<sup>70</sup> 31 Tex. Admin. Code § 356.52(a)(1-3) (emphasis added).

<sup>71</sup> Tex. Water Code § 36.1071(e)(3)(A) (emphasis added).

<sup>72</sup> 31 Tex. Admin. Code § 356.52(a)(5) respectively (emphasis added).

<sup>73</sup> *Kisor v. Wilkie*, 139 S.Ct. 2400, 2415, 2019 U.S. LEXIS 4397 (U.S. June 26, 2019)(not yet selected for publication).

<sup>74</sup> *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747-48 (Tex. 2006)(“An agency’s opinion can help

or rule is unambiguous, an agency's opinion or interpretation is given no deference (i.e., a court is not to afford an agency any deference unless the regulation is genuinely ambiguous).<sup>75</sup>

50. When interpreting a statute, a court may consider, among other matters, the: (1) object sought to be attained; (2) circumstances under which the statute was enacted; (3) legislative history; (4) common law or former statutory provisions, including laws on the same or similar subjects; (5) consequences of a particular construction; (6) administrative construction of the statute; and (7) title, caption, preamble, and emergency provision.<sup>76</sup>

51. Statutes are presumed to be enacted in: (1) compliance with the constitutions of this state and the United States; (2) the entire statute is intended to be effective; (3) a just and reasonable result is intended; (4) a result feasible of execution is intended; and (5) public interest is favored over any private interest.<sup>77</sup>

52. Words and phrases must be read in context and construed according to the rules of grammar and common usage unless otherwise having acquired a technical or particular meaning.<sup>78</sup>

53. When applying the rules of statutory construction, the court must carefully consider all the factors "in all the ways it would if it had no agency to fall back on"

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construe an ambiguity, but it cannot create one."); *Kisor v. Wilkie*, 139 S.Ct. 2400, 2415, 2019 U.S. LEXIS 4397 (U.S. June 26, 2019)(not yet selected for publication).

<sup>75</sup> *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747-48 (Tex. 2006) ("Alternative unreasonable constructions do not make a statute ambiguous.").

<sup>76</sup> Tex. Gov't Code § 311.023; *Pecos County v. Fort Stockton Holdings, L.P.*, 457 S.W.3d 451 (Tex. App.—El Paso July 30, 2014, no pet.) (applying Code Construction Act, Tex Gov't Code § 311.014, to Chapter 36).

<sup>77</sup> Tex. Gov't Code § 311.021.

because “doing so will resolve many seeming ambiguities out of the box.”<sup>79</sup> Applying the rules of statutory construction, the statute and rules are *not* ambiguous.<sup>80</sup>

54. Per Chapter 36 and TWDB’s instructions and while being mindful of the final rulings from the DFC and Reduction Rule litigation, the District prepared a plan that addresses the 2016 DFCs and includes the 2016 MAGs while clearly explaining their applicability based on the final orders in the litigation.<sup>81</sup> Applying TWDB’s limited express authority in Chapter 36 to the ordinary meaning of the plain terms, “address,”<sup>82</sup> “include”<sup>83</sup> and “unless explained as not applicable”<sup>84</sup> in the unambiguous statute, the District’s Management Plan satisfies the requirements for administrative completeness because the plan contains management goals *addressing* the DFCs and *includes* estimates of the associated MAGs with explanations of their applicability.<sup>85</sup>

55. Instead of approving the District’s plan with the 2016 Information as required by the statute because it contained all the information in section 36.1072(a),(e), the Executive Administrator ignored the plain terms of the unambiguous statute and the mandate to approve, went against all prior recommendations, and instead, issued a decision that exceeds TWDB’s limited authority.

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<sup>78</sup> Tex. Gov’t Code § 311.011.

<sup>79</sup> *Kisor*, 139 S.Ct. 2400 at 2414-15.

<sup>80</sup> *Id.* (“A court cannot wave the ambiguity flag just because it found the regulation impenetrable on first read. Agency regulations can sometimes make the eyes glaze over. But hard interpretive conundrums, even relating to complex rules, can often be resolved.”).

<sup>81</sup> Ex. A-33, pp. 7-11, 18. The District has clearly defined goals, objectives and performance standards to manage the resource long-term.

<sup>82</sup> “Address” means to “deal with” or “treat.” Synonyms include “contend with” or “grapple with.” Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/address>.

<sup>83</sup> “Include” means “to contain as part of something.” Garner Legal Dictionary, 9<sup>th</sup> Ed., p. 831.

<sup>84</sup> “Applicable” means “useable, useful, workable, practicable.” Merriam Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/applicable>. Not applicable, therefore, means not workable, not useable, not useful, not practicable.”

**C. Despite Conceding It Has No Express Authority to Unilaterally Reinstate the Superseded 2010 DFCs, TWDB Reinstates Anyway Exceeding Its Authority, Circumventing the Legislature’s Intent, and Denying Due Process.**

56. TWDB denies the plan for failure to include the 2010 Information from the first round of planning. The 2010 Information was expressly superseded and replaced with the second round of 2016 DFCs and MAGs.<sup>86</sup> The 2010 DFCs exist for historical purposes only. TWDB has no authority to reinstate lapsed, superseded DFCs particularly when determination of the DFCs themselves is expressly outside TWDB’s authority and solely left to the districts in each GMA.<sup>87</sup> By requiring the District to include the 2010 information in its plan to obtain approval, the TWDB is unilaterally reviving the 2010 lapsed DFCs in contravention to Chapter 36 and due process rights.

57. TWDB concedes there is no express authority in Chapter 36 authorizing it to reinstate the 2010 DFCs.<sup>88</sup> Instead, TWDB justifies its actions because there is “no prohibition to temporarily revert to earlier DFCs in the event that the most recent DFCs have been determined to be no longer reasonable.”<sup>89</sup> If the Legislature intended for old DFCs to remain in effect and/or to give TWDB authority to “revert to them” when a management plan was out of sync with joint planning, it would have stated so. Instead, the Legislature clearly limited TWDB’s role to administrative approval (literally, a

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<sup>85</sup> Ex. A-33, pp. 7-11, 18.

<sup>86</sup> Tex. Water Code § 36.108(c). The district representatives shall meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans, the accomplishments of the management area, and proposals to adopt new or amend *existing* desired future conditions. Tex. Gov’t Code § 311.022 (Statute is prospective unless expressly made retroactive). TWDB’s use of the terms “revert back” and “most recent” DFCs in Ex. A-38 implicitly acknowledge that the 2010 DFCs have been superseded.

<sup>87</sup> Tex. Water Code 36.108 (DFCs must be approved by 2/3 vote of GMA districts); 31 Tex. Admin. Code § 356.31-356.34.

<sup>88</sup> Ex. A-38, p. 2.



checklist to follow)<sup>90</sup> and left the DFC determinations solely up to the districts in each GMA. By mandating inclusion of the 2010 Information, TWDB completely exceeds its limited statutory authority to review plans for administrative completeness.

58. Further, when you read sections 36.1072 in conjunction with sections 36.108, 36.1083(p),(q) and section 36.10835, it is clear the Legislature intended to prohibit “reversion” to an old DFC when a DFC is successfully challenged by expressly contemplating how the scenario was to be resolved. Specifically, the Legislature did not authorize reversion or reinstatement; instead, it expressly instructed that an unreasonable DFC does not affect other DFCs and mandated that the districts in the GMA “shall follow the procedures in section 36.108 to adopt new desired future conditions applicable to the district that received the petition.”<sup>91</sup> If the Legislature intended for old DFCs to be resurrected, it would have said so by stating that the old DFCs apply until the next round of joint planning, which it clearly did not. Critically, if the statute prohibits the districts in the GMA from reverting to an old DFC by

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<sup>89</sup> Ex. A-38, p. 2.

<sup>90</sup> Tex. Water Code § 36.1072; Ex. A-21 (checklist).

<sup>91</sup> Tex. Water Code § 36.1083(p) (“If the district in its final order finds that a desired future condition is unreasonable, not later than the 60th day after the date of the final order, the districts in the same management area as the district that received the petition shall reconvene in a joint planning meeting for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition.”); (q) (“A final order by the district finding that a desired future condition is unreasonable does not invalidate the adoption of a desired future condition by a district that did not participate as a party in the hearing conducted under this section.”); Tex. Water Code § 36.10835, Judicial Appeal Of Desired Future Conditions. (“If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the same management area as the district that received the petition to reconvene ... for the purpose of revising the desired future condition. The districts in the management area shall follow the procedures in Section 36.108 to adopt new desired future conditions applicable to the district that received the petition.”).

mandating the GMA to instead convene promptly to revise and adopt a new DFC, the statute clearly prohibits TWDB, whose authority is limited to administrative completeness review, from reverting to an old DFC.

59. In addition to not being authorized and prohibited,<sup>92</sup> TWDB's unilateral reinstatement of the superseded 2010 DFCs completely circumvents Chapter 36 and renders the DFC petition process utterly meaningless. It thwarts the joint planning process and due process afforded those affected by the DFCs by detouring past notice and hearing, the 2/3 votes requirement, and an opportunity for affected persons to petition.

60. The GMA 14 districts have not taken action to reinstate the 2010 DFCs or instructed the District that the 2010 DFCs apply. Instead, GMA 14 has wholly rejected a single-county DFC adjustment for the District and decided to revise the 2016 DFCs, along with the other DFCs applicable to the other districts, in the third round of joint planning. Meanwhile, TWDB has taken the position that it cannot force GMA 14 to revise the 2016 DFCs as a result of the successful petition; yet, TWDB now brazenly reinstates an expired DFC. If GMA districts are not required to revise DFCs after a successful petition until the next round of joint planning when it addresses all of the districts DFCs, and TWDB can resurrect an old DFC, the DFC petition process is totally meaningless because the GMA districts and TWDB can ping pong back and forth avoiding any correction to a DFC after a successful petition. This totally circumvents the

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<sup>92</sup> In addition, TWDB's rigid approach ignores the staggered timing associated with the adoption of DFCs, a management plan and any rules implementing the management plan that occurs on a routine basis for all districts and that DFCs are long-term planning goals. Under this suggested approach, a district would be out of compliance any time its rules, management

Legislature's intent to provide due process to those affected by DFCs and express directive to have the districts in the GMA convene to revise a DFC.

61. Given the forward looking approach of the DFC joint planning process and the Legislature's continual improvements to the process, it is clear the Legislature never intended to look back with DFCs, figuratively or literally.

62. The Executive Administrator's decision will inevitably and undeniably result in a violation of the constitutional rights of those denied notice, hearing and the right to challenge the reinstated DFCs as well as those whose property rights are unnecessarily restricted via management of the aquifer to achieve the reinstated DFCs. These constitutional violations provide another basis for *de novo* judicial review and reversal of the Executive Administrator's decision.<sup>93</sup>

**D. The Executive Administrator's Novel Decision to Force Reinstatement Yields Inconsistent and Absurd Results Rendering it Unreasonable and Reversible.**

63. As previously stated, the statutes and rules are unambiguous, and the Executive Administrator has exceeded his authority. Even assuming the statute is ambiguous, the Executive Administrator's decision is unreasonable and should be given no deference. If a genuine ambiguity remains in a statute after exhausting all traditional tools of construction, the agency's reading must still be reasonable to be given deference. In other words, an agency's opinion is only afforded deference if the statute is: (1) ambiguous; *and* (2) the agency's interpretation is reasonable and consistent with the

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plan, and DFCs are not contemporaneously adopted.

<sup>93</sup> *Tex. Dept. of Transp. v. T. Brown Constructors*, 974 S.W.2d 655, 658 (Tex. App.—Austin 1997, pet. denied).

statute's plain language.<sup>94</sup> Here, the Executive Administrator's decision is unreasonable, inconsistent with the statute's plain language, and should given no deference.

64. The Executive Administrator's construction and interpretation of Sections 36.1071 and 36.1072 and the TWDB's corresponding rules mandating inclusion of the 2010 Information conflicts with numerous provisions of Chapter 36 and is unreasonable for a multitude of reasons set forth below. In summary, a forced reinstatement gives way to inconsistent and absurd scientific, legal and policy results.

65. A detailed explanation of the technical reasons discussed below is in the document titled, "Technical Review of the 2010 Desired Future Conditions," attached as Exhibit A-39.<sup>95</sup>

66. The Executive Administrator's mandate to include the 2010 DFCs is unreasonable and/or inconsistent with the statute's language because the 2010 DFCs are not based on the best available science and data. First and foremost, the 2010 and 2016 DFCs were based on an unscientific method of calculating recharge not founded in any scientific study and which glaringly ignores the very basics of groundwater science and how aquifers operate. Further, the GAM used in the 2010 DFC process (Northern Gulf Coast GAM) has been replaced with a newer version (Houston Area Groundwater

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<sup>94</sup> 2016 Tex. Op. Att'y Gen. KP-0115; *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747-48 (Tex. 2006) (Texas state courts consider deferring to an agency's interpretation of a statute only when the agency adopts the construction as a formal rule or opinion after formal proceedings; even when the agency has formally adopted a construction, a state court will defer to that construction only upon finding that ambiguity exists in the statute at issue and that the agency's construction is reasonable. A court will give "some deference" to an administrative agency's reasonable construction of an ambiguous statute that the agency is charged with enforcing.).

<sup>95</sup> Ex. A-39.

Model) TWDB has concluded is superior. The 2010 DFCs do not incorporate the 2013 Subsidence District Regulatory Plans and the Old GAM did not properly simulate compaction.<sup>96</sup>

67. The Executive Administrator's mandate to include the 2010 DFCs is unreasonable and/or inconsistent with the statute's language because the 2010 DFCs are based on flawed and illegal rules.<sup>97</sup> The 2010 and 2016 DFCs were developed by first assuming a future pumping limit that has since been found no longer reasonable and the regulations which enforced the pumping limit were found to be statutorily invalid. TWDB ignores that its decision is based on flawed fundamental assumptions. Further, because a district must adopt and implement rules that accomplish the goals of the district's management plan, including achieving DFCs, the TWDB's requirement will make it difficult to adopt and enforce fair and impartial rules.<sup>98</sup>

68. The Executive Administrator's mandate to include the 2010 DFCs is unreasonable because the 2010 DFCs were adopted under an old statutory scheme intentionally amended by the Legislature to rectify scientific and due process concerns. For example, the 2010 DFC joint planning process did not incorporate the mandated statutory factors, or the requirements to provide an explanatory report and use the best available science.<sup>99</sup>

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<sup>96</sup> Ex. A-39, pp. 2, 5-6, 8-9.

<sup>97</sup> Ex. A-26 (ordering by final judgment that the District's large volume groundwater user reduction rules "were adopted by said District without legal authority, and consequently are, and have been unlawful, void, and unenforceable.").

<sup>98</sup> Ex. A-39, pp. 1-3.

<sup>99</sup> Ex. A-39, pp. 1-3.

69. The Executive Administrator's mandate to include the 2010 DFCs is unreasonable because doing so creates incoherent and incongruous DFCs and MAGs not approved by the GMA districts. The GMA 14 districts have recently rejected a single-county DFC adjustment and a reversion to the 2010 DFCs prohibits proper management of the common reservoir. This undermines the very purpose of joint planning. The adoption of the 2010 DFCs would generate MAGs inconsistent with regional water plans and would not include the groundwater availability modeling information provided by TWDB in December 2015 including estimates of exempt use.<sup>100</sup>

70. The Executive Administrator's mandate to include the 2010 DFCs is unreasonable because doing so subjects the District to potential litigation. While the TWDB received letters requesting denial of the District's plan for failure to include the 2010 information, the District is aware of several affected/dissatisfied persons<sup>101</sup> whom oppose inclusion of the 2010 information including without limitation the parties who successfully petitioned the DFCs and sued the District over the invalid rules on which the DFCs are based. Specifically, see the attached resolutions from the Cities of Conroe and Shenandoah expressly opposing inclusion of the 2010 Information and committing to pursue all legal action necessary to prevent their inclusion.<sup>102</sup> The District spent nearly \$2 million dollars in legal fees in the combined litigation and cannot afford to subject itself to additional litigation. Lastly, by forcing the District to include the 2010

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<sup>100</sup> Ex. A-39, pp. 1-2.

<sup>101</sup> Tex. Water Code § 36.251 )“a person ... affected by and dissatisfied with any rule or order made by a district” is entitled to file suit against the district or its directors to challenge the validity of the order.).

<sup>102</sup> Ex. A-40, Resolution from City of Conroe dated July 11, 2019, and Resolution from City of Shenandoah dated July 24, 2019.

Information, its plan will now conflict with the state water plan against TWDB's warnings and subject the District to a potential challenge under Section 36.1072(g).

71. For these reasons, the Executive Administrator's decision must be reversed and the District's Management Plan must be deemed administratively complete.

#### **IV. Evidence in Support of Points of Appeal**

72. The following evidence is provided in support of the Points of Appeal. The District reserves the right to present additional evidence in response to the Executive Administrator's response and/or assertions or issues raised during a meeting and/or hearing.

##### **Exhibit A Affidavit of Samantha Stried Reiter**

Exhibit A-1 Letter from S. Reiter to J. Walker dated July 11, 2019

Exhibit A-2 Letter from J. Walker to S. Reiter dated July 16, 2019

Exhibit A-3 Article, *Balancing the Groundwater Checking Account Through House Bill 1763* (April 3, 2007)

Exhibit A-4 City of Conroe Letter and Resolution, May 5, 2015, and referenced minutes from GMA 14 meeting on June 26, 2013

Exhibit A-5 Resolution for the Approval of Desired Future Conditions for All Aquifers in Groundwater Management Area 14 dated April 29, 2016

Exhibit A-6 Resolution for Adoption of the Desired Future Conditions For the Gulf Coast Aquifer that Apply to the Lone Star Groundwater Conservation District dated August 9, 2016

Exhibit A-7 Letter from J. Walker to K. Jones dated Dec. 15. 2016

Exhibit A-8 Minutes and Resolution from District's Meeting dated Oct. 10, 2017

Exhibit A-9 Minutes from District's Meeting dated Nov. 6, 2017



- Exhibit A-10 Agreed Proposal for Decision dated Nov. 6, 2017
- Exhibit A-11 Final Order dated Nov. 6, 2017
- Exhibit A-12 Letter from K. Jones to the GMA 14 district representatives dated November 20, 2017
- Exhibit A-13 Minutes from GMA 14 Meeting dated Dec. 8, 2017
- Exhibit A-14 Minutes from GMA 14 Meeting dated Jan. 24, 2018
- Exhibit A-15 Letter from Z. Holland with Bluebonnet GCD to Mayor T. Powell dated Feb. 6, 2018
- Exhibit A-16 GMA 14 Resolution dated March 27, 2018
- Exhibit A-17 Minutes from GMA 14 Meeting dated Feb. 28, 2018
- Exhibit A-18 Minutes from GMA 14 Meeting dated March 27, 2019
- Exhibit A-19 Minutes from GMA 14 Meeting dated April 26, 2019
- Exhibit A-20 Letter from M. Powell to L. French dated Feb. 19, 2018
- Exhibit A-21 E-mail and accompanying attachments (1-5) from S. Allen to K. Jones dated May 9, 2018
- Exhibit A-22 Letter from H. Hardman to GMA 14 dated Jan. 30, 2019
- Exhibit A-23 GMA 14's current schedule  
GMA 14's expedited schedule for third round of joint planning  
Agenda for GMA 14's June 26, 2019 Meeting  
Agenda for GMA 14's August 15, 2019 Meeting
- Exhibit A-24 Order on Motion for Partial Summary Judgment
- Exhibit A-25 Notice of Appeal
- Exhibit A-26 Final Judgment
- Exhibit A-27 Minutes from the District's Meeting dated June 11, 2019
- Exhibit A-28 Minutes and Resolution from District's September 18, 2018 Meetings

- Exhibit A-29 Letter from B. Sledge to J. Walker dated Nov. 27, 2018 plus enclosures  
Letter from J. Walker to B. Sledge dated December 14, 2018
- Exhibit A-30 Letter from K. Jones to J. Walker dated Oct. 15, 2018
- Exhibit A-31 Draft management approved on Sept. 18, 2018 for submission to TWDB  
E-mail chain dated August through September 2018 by and between W. Oliver, K. Jones and S. Allen and TWDB's "Lone Star GCD Groundwater Management Plan Pre-Review 1 Recommendation Report 09/07/2018 (SA, DT, RB)"
- Exhibit A-32 Minutes from the District's Meeting dated Dec. 18, 2018
- Exhibit A-33 Letter from S. Reiter to J. Walker dated March 14, 2019 with March 12, 2019 Management Plan enclosed
- Exhibit A-34 Letter from J. Houston to J. Walker dated March 11, 2019  
Letter from J. Stinson to J. Walker dated April 10, 2019  
Letter from M. Jones to J. Walker dated April 18, 2019
- Exhibit A-35 Letter from S. Reese to J. Walker dated April 18, 2019
- Exhibit A-36 Letter from J. Walker to S. Reiter dated May 16, 2019
- Exhibit A-37 Letter from S. Reiter to J. Walker dated May 23, 2019 with enclosed Technical Memo and revised draft plan
- Exhibit A-38 TWDB's "Draft Lone Star GCD Groundwater Management Plan Pre-Review 1 Recommendation Report 6/24/19
- Exhibit A-39 Technical Review of the 2010 Desired Future Conditions dated August 8, 2019
- Exhibit A-40 Resolution from City of Conroe dated July 11, 2019  
Resolution from City of Shenandoah dated July 24, 2019

**Exhibit B: Select Provisions of Chapter 36 and TWDB Rules**

1. Tex. Water Code § 6.002
2. Tex. Water Code § 6.011

3. Tex. Water Code § 36.1071
4. Tex. Water Code § 36.1072
5. Tex. Water Code § 36.108
6. Tex. Water Code § 36.1081
7. Tex. Water Code § 36.1082
8. Tex. Water Code § 36.1083
9. Tex. Water Code § 36.1084
10. Tex. Water Code § 36.1132
11. 31 Tex. Admin. Code 356.50
12. 31 Tex. Admin. Code 356.51
13. 31 Tex. Admin. Code 356.52
14. 31 Tex. Admin. Code 356.53
15. 31 Tex. Admin. Code 356.54
16. 31 Tex. Admin. Code 356.55
17. 31 Tex. Admin. Code 356.56
18. 31 Tex. Admin. Code 356.57

Respectfully Submitted,

**STACEY V. REESE LAW, PLLC**

By: /s/ Stacey V. Reese

STACEY V. REESE

Bar No. 24056188

910 West Avenue, Suite 15

Austin, TX 78701

stacey@staceyreese.law

(512) 535-0742

(512) 233 -5917 FAX

*ATTORNEY FOR LONE STAR  
GROUNDWATER CONSERVATION  
DISTRICT*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served as indicated on August 9, 2019, to the following:

Mr. Jeff Walker  
Executive Administrator  
Texas Water Development Board

*Via E-mail & Hand Delivery*

/s/ Stacey V. Reese

STACEY V. REESE