RESOLUTION NO. #20-002

RESOLUTION OF THE BOARD OF DIRECTORS OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT APPROVING SUBMISSION OF THE DISTRICT GROUNDWATER MANAGEMENT PLAN FOR TEXAS WATER DEVELOPMENT BOARD REVIEW

THE STATE OF TEXAS §
§
LONE STAR GOUNDWATER CONSERVATION DISTRICT §

WHEREAS, the Lone Star Groundwater Conservation District ("District") was created by the Texas Legislature through the enactment of House Bill 2362, Chapter 1321, Acts of the 77th Legislature, Regular Session, 2001 (together with subsequent legislative amendments, the "Act"), pursuant to the authority of Article XVI, § 59 of the Texas Constitution, as a groundwater conservation district operating under Chapter 36, Texas Water Code, Section 59, Article XVI of the Texas Constitution, and the Act;

WHEREAS, the creation of the District was confirmed by the voters of Montgomery County on November 6, 2001, and as required by Chapter 356 of Title 31 of the Texas Administrative Code as in effect at the time, the District's original management plan was adopted and submitted to the Texas Water Development Board within two years of the confirmation election and subsequently amended and re-adopted in 2008 and again on November 12, 2013;

WHEREAS, Texas Water Code §36.1072(e) requires the District to review and readopt a management plan with or without revisions at least once every five years, and pursuant to Title 31, Texas Administrative Code, Section 356.54, the District must readopt that plan at least 90 days before the date the current plan expires;

WHEREAS, in September 2018, the prior nine-member appointed board of directors held a hearing and approved a revised, draft management plan for review and approval by the new seven-member elected board that would take office in November 2018 as a result of the passage of House bill 1982 by the 85th Texas Legislature (Regular Session) in 2017, which amended the Act;

WHEREAS, in September 2018, members of the Montgomery County legislative delegation requested the prior appointed board to refrain from readopting a management plan so the newly elected board of directors could make the policy decisions embodied in a plan, a request of which the appointed board honored.

WHEREAS, the Texas Water Development Board (TWDB) had previously instructed the District to include the 2016 DFCs and 2016 modeled available groundwater information in its management plan, and in September 2018, TWDB pre-approved a draft management plan with the 2016 information;

WHEREAS, the new seven-member board of directors (the "Board") was duly sworn into office on November 16, 2018;

WHEREAS, the Board held a public hearing on November 20, 2018 for purposes of hearing public comment on re-adoption of the management plan prepared and approved by the prior board;

WHEREAS, on November 20, 2018, based on public comment received and internal deliberations, the Board voted for a continuance of the decision on approval of a management plan until mid-January 2019 to allow for further review and discussion;

WHEREAS, in December 2018, TWDB's Executive Administrator acknowledged 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";

WHEREAS, on January 15, 2019, the District held an open board workshop during which the District's management plan was discussed;

WHEREAS, on January 30, 2019, the District held a special meeting in conjunction with the Groundwater Management Area Planning Committee Meeting;

WHEREAS, under the direction of the new Board, the District's staff, legal counsel, engineer, and geoscientist reviewed, analyzed, and revised the District's management plan in accordance with the statutory requirements provided by Section 36.1071 of the Texas Water Code and the administrative requirements provided by Chapter 356 of Title 31 of the Texas Administrative Code;

WHEREAS, on February 12, 2019, the District approved the form of a management plan for publication and hearing;

WHEREAS, on February 19, 2019, District staff and counsel had a teleconference with representatives at the TWDB regarding the proposed management plan approved for publication and hearing;

WHEREAS, the District issued notices in the manner required by state law and held a public hearing on the proposed management plan on March 12, 2019;

WHEREAS, the Board adopted the proposed management plan on March 12, 2019, and the District submitted it to the TWDB for approval in March 2019. In its March 2019 submittal, the District included the 2016 DFCs and MAG information but stated that the DFCs were found to be no longer reasonable and GMA 14 had taken no action to update the DFCs applicable to the District.

WHEREAS, in response by letter dated May 16, 2019, TWDB's Executive Administrator notified the District that the submitted plan was not administratively complete; and TWDB acknowledged that the 2016 DFCs were declared "no longer reasonable" and

recommended the plan to be revised to address the DFCs as adopted in 2010, which were that last approved DFCs that were not challenged.

WHEREAS, the District timely appealed the Executive Administrator's decision to TWDB, and TWDB upheld the Executive Administrator's decision; and as part of appeal process, the District timely requested mediation with TWDB and timely filed an appeal in district court in Travis County, Texas.

WHEREAS, in a good faith effort to resolve the dispute, the District and TWDB mediated the dispute; and through the mediation process, the District and TWDB reached a tentative resolution that included agreed language for certain portions of the management plan.

WHEREAS, following an order by the district court in Travis County regarding the mediation (attached to this resolution as Exhibit A), the District revised its management plan in compliance with the statutory requirements and the agreed language from the mediation with TWDB.

WHEREAS, the District has been operating under the effective parts of the management plan adopted and approved in 2013, and will continue to operate under the effective parts of the plan adopted and approved in 2013 until TWDB approves a management plan.

WHEREAS, the District is actively participating in the joint planning process with the district representatives in GMA 14; the GMA 14 districts shall propose DFCs for round three by May 1, 2021; and the GMA 14 districts shall adopt DFCs by January 5, 2022.

WHEREAS, when the DFCs are adopted in the third round of joint planning by the GMA 14 voting districts, the District will update its plan as required under Chapter 36 of the Texas Water Code.

WHEREAS, on March 10, 2020, the District approved the form of a revised management plan for publication and hearing that incorporated the agreed language from the mediation with the TWDB, among other changes made to update information (the "Management Plan");

WHEREAS, the proposed Management Plan adopts several guiding principles for the District's regulatory program including without limitation (i) honoring and protecting private property rights by affording an opportunity for a fair share to every owner of each common reservoir, (ii) adopting and enforcing fair and impartial rules that allow for potential adjustments as warranted to achieve the management standards, and (iii) collecting and sharing data so each stakeholder can make informed decisions;

WHEREAS, the District issued notices in the manner required by state law and held a public hearing on the proposed management plan on April 14, 2020;

WHEREAS, based on written and public comments received by the District, no substantive changes were made to the proposed Management Plan;

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WHEREAS, the District will coordinate with the appropriate surface water management entities after the public hearing and readoption of its Management Plan to afford surface water management entities within the boundaries of the District the opportunity to review and provide comments to the District on its Management Plan;

WHEREAS, the District will forward, after the public hearing and readoption of its Management Plan, a copy of the plan to the other districts in the management area;

WHEREAS, the Board finds that the proposed Management Plan meets all of the requirements of Chapter 36, Texas Water Code, and 31 Texas Administrative Code Chapter 356 and includes the agreed language from the mediation with the TWDB; and

WHEREAS, the Board finds that re-adoption of its Management Plan at its April 14, 2020 meeting will restart the five-year statutory time period by which the District must readopt its Management Plan, and the District will update its plan after adopting desired future conditions as required under Chapter 36 of the Texas Water Code.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS THAT:

1. The above recitals are true and correct.

2. The Board hereby adopts the following guiding principles for the District's regulatory program:

    a. honoring and protecting private property rights by affording an opportunity for a fair share to every owner of each common reservoir;

    b. adopting and enforcing fair and impartial rules that allow for potential adjustments as warranted to achieve the management standards; and

    c. collecting and sharing data so each stakeholder can make informed decisions.

3. The Board hereby adopts the Management Plan as the Management Plan of the District, including any revisions made based on the comments received from the public at the hearing or Board meeting, and based on recommendations from the District Board, staff, legal counsel, engineer, geoscientist, or TWDB, and authorizes submittal of the Management Plan to the TWDB for review and approval.

4. The Board, District staff, and the District's legal counsel, engineer, and geoscientist are further authorized to take all steps necessary to implement this resolution and submit the Management Plan to the TWDB for its approval.

5. The Board, District staff, and the District's legal counsel, engineer, and geoscientist are further authorized to take any and all action necessary to coordinate with the TWDB as may be required in furtherance of TWDB's approval.

6. This Resolution shall be posted on the District's website and in its office.

AND IT IS SO ORDERED.

PASSED AND ADOPTED FOR SUBMISSION TO THE TEXAS WATER DEVELOPMENT BOARD TO BEGIN ITS REVIEW by a quorum of the Board of Directors on April 14, 2020.

LONE STAR GROUNDWATER CONSERVATION DISTRICT

By: _____
Harry Hardman, President

ATTEST:

_____
Larry Rogers, Board Secretary

EXHIBIT A

Filed In The District Court
of Travis County, Texas
MAR - 9 2020 NNR
At 2:33 PM
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-19-007442

LONE STAR GROUNDWATER CONSERVATION DISTRICT, Plaintiff,	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
TEXAS WATER DEVELOPMENT BOARD, Defendant.	§	353rd JUDICIAL DISTRICT COURT

AGREED ORDER ON JOINT MOTION TO ABATE PENDING OUTCOME OF MEDIATION

After considering the Joint Motion to Abate Pending Outcome of Mediation, the Court grants the motion and abates the case as follows:

1. Lone Star Groundwater Conservation District's ("District") administrative appeal is brought pursuant to section 36.1072(f) of the TEX. WATER CODE ("Section 36.1072") and 31 TEX. ADMIN. CODE § 356.55(b) ("TWDB Rule 356.55") authorizing a groundwater district to appeal the Texas Water Development Board's ("TWDB") denial of approval of a management plan in a suit for *de novo* review in Travis County, Texas if the District and TWDB do not resolve the conflict through mediation.

2. The District requested mediation pursuant to Section 36.1072(f) and filed this administrative appeal.

3. The District and TWDB mediated the dispute on January 23, 2020. The District and TWDB worked in good faith to resolve the dispute and have reached a tentative resolution that includes agreed language for certain portions of the management plan.

SCANNED

The District and the State, on behalf of the TWDB, request the Court to abate this case to allow time for the District to amend the plan in accordance with the agreed language, hold a hearing on the adoption of the revised plan, and resubmit any revised adopted plan to the TWDB for approval; and for the TWDB to review and consider approval of the plan. If the District's plan is approved as administratively complete, this lawsuit will be mooted and the District and State will subsequently notify the Court and request the Court to dismiss the suit. If the District and TWDB do not resolve the dispute and/or the District's plan is not approved as administratively complete, the District and State will notify the Court that mediation was unsuccessful and request the Court to lift the abatement so the appeal can proceed.

4. The District will provide a status update to the Court on or before May 1, 2020.

SIGNED on this 9 day of March, 2020.

Presiding Judge

Dustin M. Howell

AGREED AS TO FORM AND SUBSTANCE:

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