

PETITIONS OF:	§	
G& J RANCH, INC.		
AND MESA WATER LP	§	
REGARDING	§	BEFORE THE
HEMPHILL COUNTY UNDERGROUND	§	
WATER CONSERVATION DISTRICT,		
NORTH PLAINS GROUNDWATER	§	TEXAS WATER
CONSERVATION DISTRICT, HIGH		DEVELOPMENT BOARD
PLAINS UNDERGROUND WATER	§	
CONSERVATION DISTRICT, AND		
PANHANDLE GROUNDWATER	§	
CONSERVATION DISTRICT		

COMMENTS OF INTERESTED PARTY

TO THE EXECUTIVE ADMINISTRATOR:

NOW COMES CITY OF AMARILLO, TEXAS, (Interested Party), and files these comments in the above-styled proceeding filed by those named petitioners pursuant to Texas Water Code Section 36.108(f) appealing the approval of Desired Future Conditions in Groundwater Management Area 1 (GMA 1), and would respectfully show the Board as follows:

I. LEGALLY DEFINED INTEREST

The City of Amarillo (City) is a home rule municipality which is the owner of 253,000+/- acres of groundwater and groundwater rights in several counties across the GMA 1. A portion of City's groundwater rights are already under active or pending production as a municipal water supply source for over 200,000 persons, while the remainder are held in reserve for the future use of our residents and city. Specifically, City owns a legally defined interest in groundwater (by deeds duly filed of public record at the county clerk's office) in Carson, Dallam, Hartley, Ochiltree, Potter, Randall, and Roberts counties, thereby giving the City a vested interest in the rules and activities of the North Plains Groundwater Conservation District, the High Plains

Underground Water Conservation District, and the Panhandle Groundwater Conservation District, each a member of GMA 1.

II. COMMENTS

Interested Party submits the following comments for the Board's consideration as to each petition in the above styled proceeding(s):

A. City supports local groundwater planning and management. The Legislature has ordained locally elected groundwater districts as the preferred method for groundwater management in this state. TEX. WATER CODE, §36.0015 and 36.059. In light of this clear public policy, the Texas Water Development Board (Board) should indulge a presumption of reasonableness when these districts come together and determine a Desired Future Condition (DFC) for the aquifer in their management area. TEX. WATER CODE, §36.108.

B. "Reasonable" requires neither singularity nor unanimity. State law requires only that a GMA set a "reasonable" desired future condition. TEX. WATER CODE, §36.108(f). State law does not require that there must be a singular numerical goal for all areas of the GMA. In fact, the law specifically contemplates the potential for setting different DFCs within a region. TEX. WATER CODE, §36.108(d). Nor does state law require that all landowners must agree to the limitations implicit in any DFC. In fact, it is a predictable recipe for failure to expect or require 100% agreement on any public policy of significance such as a DFC. Reasonable minds may differ, but that does not render the result reached by elected officials unreasonable *per se*. City suggests the determination of "reasonableness" will be when the individual districts comprising GMA 1 implement the rules necessary to meet and enforce the DFC.

C. DFC is a temporary condition. The Texas Water Code wisely recognizes that conditions surrounding groundwater management and use are not static. The Code specifically

requires that regional water plans, groundwater district rules, district management plans, and even the DFC must be revised every five (5) years. TEX. WATER CODE, §36.1071(f), §36.1072(e), §36.108(d). Thus any DFC is subject to continued cycles of development, implementation, evaluation, and reconsideration.

D. Full effect of the DFC is presently unknown until the districts adopt rules to implement same. State law specifies that *after* the GMA sets the DFC, then constituent groundwater districts must adopt rules to implement or enforce the DFC. TEX. WATER CODE, §36.108(f) (1)-(4) This has not yet occurred. As a practical matter, City suggests it is impossible to determine the full and practical impact of any DFC in the absence of rules adopted by each district. It remains to be seen if the member districts will wisely adopt rules that provide some equity near their mutual boundaries where the different DFC number abut each other or what effect the DFC and rules will have on any particular landowner and their current or future uses and value of their groundwater. Certainty in the DFC and associated rules will provide all owners an opportunity to determine the actual impact of any DFC. For example, if an owner owns land straddling two DFC zones, the district(s) may allow the landowner to elect which DFC applies. Or, a district may adopt density and spacing rules near its boundary with a neighboring district to “soften” the impact of one DFC abutting another.

E. City accepts the rationale for varying DFCs within GMA 1. Without waiving the foregoing comments, the City also notes that it generally supports the concept of a 50/50 DFC and, reluctantly, can accept a 40/50 DFC in part of the region as an acceptable deviation from that concept. However, the City remains concerned that the incorporation of an 80/50 DFC in the Hemphill County Underground Water Conservation District causes the spread across the GMA to be too large on its face. The City will accept the DFCs as proposed and will withhold final

judgment on all DFCs, until we see the rules adopted by the districts to implement the and enforce the DFCs.

In conclusion, the City of Amarillo's comments are intended to point the Board toward a review of the evidence supporting the decision of GMA 1 in setting its DFCs, and thereby find a basis for concluding that same is reasonable, thus supporting local water planning in this area and the state. As noted, the true test of reasonableness in this endeavor will be when the four groundwater conservation districts adopt and implement their rules based on these DFCs. All parties have the opportunity to participate in the rule making proceedings, and are afforded legal remedies and protections at the point that a district's actions unduly impact an owner's property rights.

III. VERIFICATION

The attached affidavit of W. Jarrett Atkinson, the Deputy City Manager of the City of Amarillo, Texas, attesting to and verifying the factual assertions herein is now incorporated by reference into this document for all purposes as though set forth verbatim herein.

Respectfully submitted,

CITY OF AMARILLO, TEXAS

BY: 

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ATTORNEY FOR INTERESTED PARTY, CITY OF AMARILLO

STATE OF TEXAS §
 §
COUNTY OF POTTER §

AFFIDAVIT OF

W. JARRETT ATKINSON

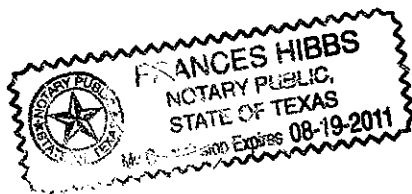
Before me the undersigned notary, on this day personally appeared W. Jarrett Atkinson, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

“My name is W. Jarrett Atkinson. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am the deputy city manager of the City of Amarillo, Texas. In my official capacity I have oversight of the City’s groundwater resources. The facts stated in this affidavit and in the attached document are within my personal knowledge and are true and correct.”

W. Jarrett Atkinson

Sworn to and subscribed before me by W. Jarrett Atkinson as deputy city manager on this 25 day of November, 2009.

Frances Hibbs
Notary Public—State of Texas



CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above document was sent to the following persons and entities below on this 25th day of November, 2009 via certified mail:

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Marcus W. Norris, as City Attorney