

PETITION APPEALING ADOPTION OF  
DESIRED FUTURE CONDITIONS FOR THE  
TRINITY AQUIFERS BY THE DISTRICTS IN  
GROUNDWATER MANAGEMENT AREA 9

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BEFORE THE  
  
TEXAS WATER  
  
DEVELOPMENT BOARD

**PETITIONOR'S APPEAL CHALLENGING DESIRED FUTURE CONDITIONS  
ADOPTED BY THE DISTRICTS IN GROUNDWATER MANAGEMENT AREA 9**

**TO THE EXECUTIVE ADMINISTRATOR:**

The Flying "L" Guest Ranch, LTD. ("Petitioner") files this appeal pursuant to Texas Water Code § 36.108(l) – (o) and Title 31 Texas Administrative Code Chapter 356, Subchapter D. Petitioner files this appeal to challenge the reasonableness of the desired future conditions (the "DFC") approved by the districts ("Districts") in groundwater management area 9 ("GMA 9") for the Trinity Aquifers in the groundwater management area. Petitioner seeks a finding that the DFC is not reasonable and a recommendation that the Districts revise the DFC as provided herein. In support thereof Petitioner shows the following:

**A. Preliminary Matters**

1. The Districts adopted the DFC for the Hill Country Trinity Aquifers on July 26, 2010 by Resolution No. 07-26-10-01.
2. The deadline to file an appeal with the Texas Water Development Board ("Board") challenging the DFC is July 26, 2011.
3. Petitioner provided the Districts with a copy of this Petition and supporting evidence on June 24, 2011, at least thirty days prior to the filing of this Petition with the Board.
4. The substantive issues raised in the Petition have not been previously reviewed by the Board.

## **B. Petitioner Has a Legally Defined Interest in Groundwater in GMA 9**

1. Petitioner owns and operates the Flying "L" Guest Ranch ("Ranch") located in southeast Bandera County, Texas. Bandera County is located within GMA 9. Located on the Ranch are 7 water wells that have been permitted by the Bandera County River Authority and Groundwater District ("BCRAGD"), a district in GMA 9. The wells are in the Trinity Aquifers. The permits grant Petitioner the right to withdraw up to 2,096 acre-feet of groundwater per year from the wells on the Ranch. Therefore, Petitioner has a legally defined interest in groundwater in the GMA 9.

2. Petitioner also owns 100 acres of unimproved land in Bandera County that is adjacent to the Ranch and held for Petitioner's new development. Under BCRAGD rules and state law, Petitioner is eligible to apply for and obtain a water well permit authorizing the drilling and operation of a well on the 100 acre tract of land and the withdrawal of up to 100 acre-feet of groundwater per year to serve new development on the land. Therefore, Petitioner has a legally defined interest in groundwater in GMA 9.

## **C. Summary of Evidence that the DFC is Not Reasonable**

The Districts adopted a single DFC for the Hill Country Trinity Group of aquifers to "allow for an increase in average drawdown of approximately 30 feet through 2060 consistent with 'Scenario 6' in TWDB Draft GAM Task 10-005" ("GAM"). "Scenario 6" equals 100,000 acre-feet of pumping per year from the Trinity Aquifer in the management area. The 100,000 acre-feet of pumping is based on the total 2008 pumping estimates provided by the Districts. The 2008 pumping estimates provided by the Districts totaled 60,468 acre-feet for the entire groundwater management area. For Bandera County, the 2008 pumping estimate totaled only 5,000 acre-feet, including exempt use.

The adopted DFC has been used to calculate a "draft" managed available groundwater ("MAG") amount of 66,163 acre-feet for the managed groundwater area. The draft MAG is not subdivided between the upper, middle, or lower units of the Trinity Group of aquifer. The draft MAG for Bandera County in the year 2010 is 5,222 acre-

feet. This amount declines in the following decades and in the year 2060 is 2,497 acre-feet per year. The estimate of exempt use in Bandera County for the year 2010 is 2,062 acre-feet per year. This amount increases in the following decades and in the year 2060 is 4,787 acre-feet per year. The total pumping for Bandera County over the 50 year planning period is static at 7,284 acre-feet per year. Given the Legislature's mandate to districts to implement rules necessary to achieve the selected DFC, pumping in Bandera County will be limited to no more than this amount.

Petitioner challenges the reasonableness of the DFC on the following grounds:

1. The DFC is unreasonable because it is based on a GAM that does not incorporate current pumping amounts authorized under permits issued by the Districts. Petitioner, for example, has permits authorizing the withdrawal of 1,300 gpm or 2,096 acre-feet per year. However, the "Scenario 6" simulation used by GMA 9 to produce the DFC includes only about 12 acre-feet per year of pumping in the area covered by the Petitioner's permitted wells. The failure to consider Petitioner's and others permitted amounts will have a serious adverse impact on private property rights in the management area. The problem stems from the 2008 pumping estimates provided by the Districts, which were grossly underestimated and used as the foundation for the GAM and DFC. BCRA GD, for example, has data showing the amount of water authorized for withdrawal under permits issued by the district, but this information was either not provided or ignored in the planning process.

2. The DFC is unreasonable because it adopts a single average drawdown limit for the three aquifer units that make up the Trinity Group. This does not meet the definition of a "desired future condition" as promulgated by the Board, which requires a quantified condition for a "specified aquifer" or subdivisions of an aquifer. Because the Trinity is comprised of three distinct and separate aquifer zones, the adoption of a DFC expressed as a single average drawdown throughout all three of the Trinity Group aquifer zones is not appropriate and is inherently arbitrary. Furthermore, selection of an average condition for all of the Trinity Group aquifers in GMA 9 is not a reasonable management goal because there are an unlimited number of very different scenarios that could result in the DFC as stated. Consequently, the selection of a single value of

average drawdown is not useful unless it is bound to a specific scenario that defines the amount of water level decline applicable to each zone associated with the Trinity Group.

3. The DFC is unreasonable because it is based on an average drawdown that is too vague, ambiguous and inherently arbitrary to be an effective management goal. GMA 9 considered numerous model simulations with different pumpage inputs. Variations in the predicted aquifer response (and therefore possible DFCs) generated by each of these simulations is solely a function of predetermined estimates of the locations, production rates, and schedules of the pumpage input. As previously described, the locations and rates of pumpage included in the simulation selected by GMA 9 do not accurately reflect actual existing use and authorized permit amounts. As a result, Scenario 6 adopted by GMA 9 as the basis for the DFC is based on faulty inputs and assumptions that did not accurately reflect existing pumping, permitted pumping or reasonably anticipated future pumping, making the DFC unreasonable and unachievable.

4. The adopted DFC is not physically possible. For the reasons outlined in 1, 2, and 3 above, it is not possible for the districts in GMA 9 to demonstrate that their management plan and rules can achieve the DFC. Specifically, existing usage and authorized permitted pumping in Bandera County is grossly underestimated and results in a predicted managed available groundwater ("MAG") amount that is substantially less than actual use, permitted production and anticipated growth in exempt use.

5. The adopted DFC negatively impacts private property rights. Petitioner has existing permits from the BCRAGD authorizing production of up to 2,096 acre-feet of water per year. Petitioner has invested millions of dollars in the development of his real property with the legitimate expectation of being able to exercise Petitioner's right to withdraw groundwater owned by the Petitioner to support this investment. The adopted DFC will result in reduction of Petitioner's authorized production permits and Petitioner will suffer direct harm by the unreasonable, arbitrary and unsupported actions of the districts in GMA 9 in setting the DFC. By failing to include existing actual use and existing authorized production and to select a desired future condition based upon these inputs, the GMA 9 effectively reverse engineered the DFC to reflect a MAG consistent with the erroneously assumed existing and authorized production. The end result must

inevitably be a reduction in authorized production for the Petitioner which, in the absence of proof or science establishing adverse impacts associated with existing and authorized production, is inherently unreasonable.

6. The DFC is not reasonable because of the adverse socio-economic impacts that are reasonably expected to occur as a result of attempting to implement it as a management goal. For example, according to the 2011 Plateau Region Water Plan § 2.4.1, Bandera County is anticipated to experience a significant increase in population over the next 50 years. This is projected to result in a 213% increase in water demand. The amount of water made available under the DFC is a constant 7,284 acre-feet per year, including exempt uses, throughout the 50 year planning period. This amount is not adequate to cover permits already issued in the BCRAGD, much less the anticipated new demands from population growth and cannot be shown to be necessary to protect the aquifer from adverse consequences or protect existing users. Therefore the groundwater management area will suffer serious adverse impacts if the water currently produced or permitted or needed to accommodate new growth is not made available. Given the substantially underestimated existing and permitted use and the projected, significant increase in population and water demand for Bandera County, it is unreasonable to adopt a DFC predicated on the assumption of constant pumping demands throughout the 50 year planning period.

7. The DFC is unreasonable because it does not allow for a reasonable and prudent development of the state's groundwater resources. According to the 2011 Plateau Region Water Plan Table 3-1, the water available from the Trinity Group of aquifers in Bandera County under drought-of-record conditions is 13,558 acre-feet per year for all decades. The adopted DFC ignores the best information available and would unreasonably preclude development of the available groundwater resources in the county in the face of significant increases in water demands.

8. The DFC is not reasonable because it conflicts with the state's policy of encouraging economic development. The DFC creates an artificial shortage of water that will be used to limit future development in the management area. This will have an adverse affect on creating new jobs, businesses, and tax base for the management area and the state.

**D. Petitioner's Evidence for a Hearing**

Exhibit A. GMA 9 Resolution No. 07-26-10-01.

Exhibit B. Board Draft GAM Task 10-005 (Hutchison, 2010) and related model files.

Exhibit C. Board GAM Run 10-050 MAG version 2 (Hassan, 2011).

Exhibit D. Petitioner's Permits and related land and well information.

Exhibit E. Documents obtained from or compiled by BCRAGD or GMA 9.

Exhibit F. BCRAGD 2010 Rules.

Exhibit G. BCRAGD 2002 Rules.

Exhibit H. 31 T.A.C. Chapter 356, Subchapter A, C, D.

Exhibit I. Texas Water Code Chapter 36.

Exhibit J. BCRAGD Management Plan.

Exhibit K. 2011 Plateau Region Water Plan

Exhibit L. Proof of Delivery of Petition to GMA 9 Districts

Petitioner reserves the right to present additional evidence in response to assertions or issues raised during a hearing.

**E. Petitioner Information**

The Flying "L" Guest Ranch, LTD.  
P.O. Box 2066  
Bandera, Texas 78003  
830-796-3018  
trip@texaslandman.net

An affidavit attesting to the truth of the matters contained in this Petition is attached. Petitioner hereby authorizes the representatives identified below to act for and on behalf of Petitioner in this matter to the fullest extent and nature.

**Petitioner Representative Information**

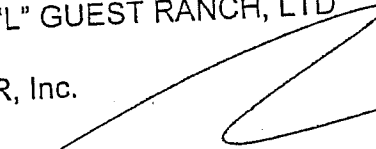
Rene Ruiz  
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Respectfully submitted,

FLYING "L" GUEST RANCH, LTD

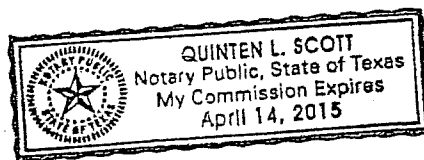
By: FLGR, Inc.

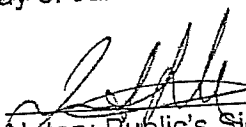
By:   
Harold T. DuPerier, III, President

State of Texas     §  
County of Banderá   §

Before me, the undersigned, on this day personally appeared Harold T. DuPerier, III, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of this office this 23<sup>rd</sup> day of June 2011.



  
Notary Public's Signature

VERIFICATION

STATE OF TEXAS §


BANDERA COUNTY §

Before me, the undersigned notary, on this day personally appeared Harold T. duPerier, III, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

"My name is Harold T. duPerier, III. I am the holder of permits issued by the Bandera County River Authority and Groundwater District, the President of FLGR, Inc., the General Partner of the Flying "L" Guest Ranch, LTD., and a landowner in Bandera County, Texas. I am capable of making this verification. I have read the 'Petition Appealing Adoption of Desired Future Conditions for the Trinity Aquifers by the Districts in Groundwater Management Area 9.' The facts stated in it are within my personal knowledge and are true and correct."

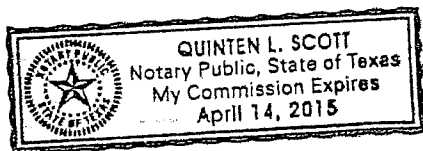
FLYING "L" GUEST RANCH, LTD.

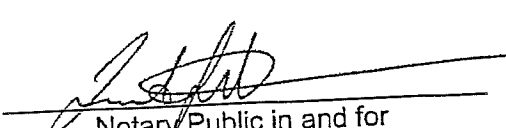
By: FLGR, Inc.

By:   
Harold T. duPerier, III, President

Sworn to and subscribed before me by Harold T. duPerier, III on the 23rd day of June, 2011.

[seal]



  
Notary Public in and for  
The State of Texas

My commission expires: 4/14/2015