

REPLY BRIEF SUBMITTED BY DR. CURTIS CHUBB

**IN REPLY TO BRIEFS SUBMITTED BY
POST OAK SAVANNAH GROUNDWATER DISTRICT (POST OAK);
TCEQ OFFICE OF THE PUBLIC INTEREST COUNSEL; AND
TCEQ EXECUTIVE DIRECTOR**

TCEQ DOCKET NUMBER 2022-0299-MIS

Contact information:

Curtis Chubb, Ph.D.
Blue Dog Ranch
830 County Road 330
Milano, Texas 76556
512/455-9180
texas.rain@centurylink.net

I had never seen a “temper tantrum” in writing before I read Post Oak’s Response to my Petition. To understand why I call it a “temper tantrum”, you only need to know that there are fewer than six pages of their 171-page Response that actually address the basis for my Petition – the remaining 155 pages focus on my home, my willingness to use personal funds to fight for our aquifers, and their defense of the extreme overpermitting caused by treating the Texas Water Development Board’s important numbers called MAGs as irrelevant.

But Post Oak’s attempts to obfuscate how they have violated their own Rules for at least five years couldn’t hide the following fact: they have not even produced the “possible schedule for reducing groundwater production in the affected management zone(s)” which District Rule 16.4 describes as the *minimum action* following the breach of Threshold Level 1.

The Post Oak people don’t like anyone to question either their authority or decisions. For example, Post Oak introduced their Response by warning Readers that the tone of their Response “*is appropriately firm and direct*” (**Post Oak’s Response - Page 2**). After recognizing the authoritarianism of that statement, they added the following disclaimer: “*this response should in no way be construed as a desire to deter those efforts of any citizen.*” (Page 2)

The following Table dramatizes the importance of District Rules 16.3 and 16.4 – especially the requirements for public meetings and well-owner notifications. Although Post Oak has known since at least 2018 that their groundwater policies caused Threshold Levels to be exceeded for FIVE AQUIFERS (they are capitalized in the following Table), *they have not followed their own Rules and 3,380+ people living in Milam/Burleson Counties do not know that their groundwater sources have been jeopardized.*

Instead of admitting their mistakes and scheduling the required meetings and notifying well owners, Post Oak used their Response Brief to describe how that they already notify well owners about the groundwater problems: “*the District and/or its professional consultants are in contact with well permittees personnel on an ongoing basis and they were keenly aware of thresholds being reached*” (**Post Oak’s Response – Page 3**). This represents Post Oak’s lack of respect about the importance of groundwater to Milam/Burleson Counties; just think about what they said, they actually feel comfortable in saying on public record that talking with a few well permittees is equivalent to having meetings with and notifying over 3,000 people.

SOURCE AQUIFER	NUMBER OF WELLS (EXEMPT AND NON-EXEMPT)
CALVERT BLUFF	578
CARRIZO	381
Hooper	622
QUEEN CITY	926
SIMSBORO	544
SPARTA	951
Yegua - Jackson	1,953
Unidentified	3,332
	9,287 (Total)

Reference: Post Oak Website

Since Post Oak has not held public meetings as required by District Rules 16.3 and 16.4, we the citizens have no idea about what they are doing in their myriad and esoteric studies. The presentations by the hydrologist are both over-complex (it takes more time to create an educational presentation instead of just throwing out graphs and computer models) and do not provide the basic information required to understand what has caused the depletion of the aquifers and what Post Oak is planning to do to correct the problem. I don't think the Post Oak staff or Directors know what they are going to do.

In the following pages, I counter each fallacious argument advanced by Post Oak to dismiss the charge that they have not only violated the District Rules – but also the Public's trust. Instead of acting as the governmental agency that keeps citizens informed about the growing groundwater crisis facing Milam/Burleson Counties, Post Oak's guiding principle has deteriorated from "I will do what is right" to "What I do is right". Post Oak's actions regarding District Rules 16.3 and 16.4 suggest they neither need the citizens' input nor approval.

POST OAK ATTEMPTS TO OBFUSCATE THE IMPORTANT ASPECTS OF THE PETITION:

Two unanswered questions about the following excerpts from Post Oak's Response are:

- 1) What does it have to with the Petition?
- 2) Did the Board approve Post Oak's Response before it was submitted?

1. **Post Oak's Response Brief – Page 1:** *"Unfortunately, in Dr. Curtis Chubb's ("Petitioner" or "Chubb") case, while he owns land, he does not own any of the water that may underlie his property."*
 - A total of 51 pages of their Response delve into the fact that I bought my stunning 90 acres of Milam County land from a person who had already signed a groundwater lease – I can use the groundwater for my livestock and personal uses, I just can't sell it. Why would Post Oak use 51 pages to address this issue? This has nothing to do with my Petition.
2. **Post Oak's Response Brief– Page 2:** *"Petitioner simply disagrees with the District's approach of permitting the production of groundwater subject to the reserved authority to limit and decrease the volume of permitted production as more landowners seek production permits, production otherwise increases, or monitoring of actual groundwater levels evidences that authorized production should be limited to benefit the aquifer or assure the long-term sustainable yield of the aquifer is accurate."*
 - This is a hackneyed accusation used by Post Oak in their attempts to discredit the authors of the two preceding Petitions for Inquiry focused on Post Oak. There is nothing in my Petition supporting this accusation + this has nothing to do with my Petition.

3. **Post Oak’s Response Brief – Page 6:** *“In the District’s Response to Chubb’s [2015] Petition for Inquiry, it was noted that “[f]or example, in November 2013 just prior to the Commissioner’s Court appointing new board members, Petitioner placed an ad in a local newspaper that stated in pertinent part that; “Available Groundwater is the pumping cap set by the State based on the District’s decision...” Larry French, Director of the Groundwater Resources Division of the Texas Water Development Board, was asked by the General Manager to clarify the issue for use before the Commissioner’s Court.”*
- You must be asking the same question I asked when I read the above excerpt – does Post Oak keep a dossier on me? I created that advertisement TEN YEARS AGO and it cost me \$300 of my personal funds to publish – which is probably more than any of the Post Oak staff and board have spent of their personal funds to protect our aquifers. Before my campaign, all five Milam County directors had been reappointed for 12 years. The week following my advertisement, three NEW directors were appointed - two of which still serve on the board (President Sidney Youngblood and DFC Committee Chair Steven Wise). Is Post Oak unhappy that my work resulted in the appointment of Youngblood and Wise?
 - After their foray about my advertisement, Post Oak used the next three pages of their Response (Pages 5-7) to lament my belief that the Threshold Exceedances are linked to Post Oak’s treatment of MAGs as *“Irrelevant Numbers.”* In addition to the large amount of hand-waving in the present Post Oak’s Response, there was a large amount of hand-waving in 2013 when I was campaigning for new Directors. Although Post Oak highlighted Larry French’s (a Texas Water Development Board (TWDB) official) opinion about the meaning of MAGs, I was able to extract from Mr. French during an extended email exchange that his MAG statements were only *“his opinion”* since TWDB did not have an official statement about MAGs besides using them as a pumping cap in regional water planning. Mr. French worked as a hydrologist for Post Oak before 2006 – a fact never disclosed then or now by Post Oak.
 - Post Oak’s obsession about their treatment of MAGs as *“Irrelevant Numbers”* is a mystery to me since MAGs are not listed in Section 3 of my Petition which clearly and succinctly describe the *“Specific Rules violated by the District”*. In fact, Post Oak’s General Manager often states that Post Oak *“manages to the DFCs”* – a management paradigm which ignores MAGs.
 - **NOTE: I file the following clarifications/objections at this point:**
 - a. It appears that Post Oak’s excessive hand-waving about me stating that Post Oak considers MAGs as *“Irrelevant Numbers”* convinced the Office of the Public Interest Counsel to state that I contended *“that the District has **violated** Section 36.1132 of the Texas Water Code by failing to consider modeled available groundwater (MAG) when issuing permits”* (Page 6 – OPIC). I never accused Post Oak of violating Section 36.1132, I simply tried to explain how treating MAGs as Irrelevant Numbers was the root cause for the

proven Threshold Exceedances. If Post Oak had “adhered” (the word I use in the Petition) to Section 36.1132 and issued pumping permits “to the extent possible...up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition,” the amount of pumping permits would not have excessively exceeded the MAGs. No one can question that conclusion.

- b. The multiple pages of Post Oak’s Response obsessing about my description of their abuse of MAGs as “treating them as Irrelevant Numbers” also convinced the Office of the Public Interest Counsel to focus on MAGs in his response (Pages 7-9). **But MAGs is not what I charge Post Oak of violating – Section 3 of my Petition clearly and succinctly details District Rules 16.3 and 16.4 as the “Specific Rules Violated by the District.”** As described in the preceding paragraph, I determined that to assist Reviewers to understand how the Threshold Exceedances originated, one had to understand MAGs. The explanation was for educational purposes only – MAGs are not the Rules I assert that Post Oak has violated for at least FIVE YEARS.
- c. The Office of the Public Interest Counsel also states the following on Page 6 of his brief: “OPIC notes that while Dr. Chubb focuses his Petition on the Carrizo and Simsboro Aquifers, he additionally **alleges** that Calvert Bluff, Queen City, and the Sparta Aquifers have also breached their Threshold Levels.” The word “**alleges**” is defined as a claim typically **without proof** that this is the case. I specifically and clearly indicated the source of the information concerning the identities of the aquifers that have exceeded their thresholds in Figure 4 of my original Petition: **Figure 4: Slide presented by the Intera hydrologist at the 4 December 2020 DFC Committee Meeting listing Aquifers which had exceeded Threshold Levels (See Page 9 of Petition).**

POST OAK ATTEMPTS TO EXPLAIN THAT THEY HAVE DONE NOTHING WRONG:

The following are examples of how Post Oak attempted to defend themselves in their Response Brief - every one of their arguments is rebutted.

1. **Post Oak’s Response Brief – Page 2:** “*The Desired Future Conditions in question were required to be adopted using the best available science which was the State’s Groundwater Availability Model (GAM). Unfortunately, the application of that previous version of the GAM led to inaccurate predictions of DFCs and such inaccuracies ultimately and unknowingly led to adoption of unattainable DFCs by the District.*”
 - This is Post Oak’s first defense for why the thresholds have been exceeded for five of the seven aquifers within Post Oak’s boundaries. It is a novel defense which I have nicknamed: **BLAME THE TEXAS WATER DEVELOPMENT BOARD (TWDB).** No specific documentation was presented to support their claim.

- Evidence challenging the validity of the “BLAME THE TWDB” excuse is presented in the following Table which illustrates that Post Oak has habitually overpermitted the aquifers when compared to the MAG.

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

The displayed data allow a comparison of the existing pumping permits and the MAG for the groundwater districts of GMA 12 including Post Oak. (Ref: DFC Explanatory Report for GMA 12 dated September 2017.)

- The Table compares the MAG and Existing Pumping Permits for the six groundwater districts of GMA 12 (Groundwater Management Area 12). A quick perusal of the Table reveals that Post Oak had approved pumping permits equal to 231% of the MAG – no other groundwater district came close to the amount of overpermitting although they were all operating under DFCs adopted by GMA 12.
2. **Post Oak’s Response Brief – Page 2:** *“However, with or without comments from the public or stakeholders, the District is well aware of its charge, and is in line with the Rules it has adopted to facilitate compliance with Chapter 36, Texas Water Code.”*
- This statement is unexplained: Is it one of Post Oak’s explanations for not notifying well owners and holding meetings? It is as if Post Oak is trying to minimize the importance of public input. Is this their defense for violating Rule 16.3/16.4?
 - The paramount reason for involving landowners in the discussion about Threshold Exceedances is that it is the landowner who will pay the price for the failures of Post Oak.
 - Another important reason for the public meetings with well owners is that the face-to-face meetings allow hard questions to be asked of the Post Oak staff and consultants – the answers may help people understand what happened.
 - It is apparent that the hydrologist has an outsized role in the function of Post Oak – with significant influence on the decisions of the Board. It would be important for the hydrologist to explain the following philosophy he espoused in September 2019 during “sworn testimony” especially since a large percentage of Milam County wells are in the shallow portion of the aquifer outcrop:

“I would also note that I do not consider it to be an unreasonable impact if the water level were to drop below the pump in an existing well where the well only penetrated the shallow portion of the aquifer outcrop.”

3. **Post Oak’s Response Brief – Page 3:** *“The Board has adopted Rules that support the various statutory constructs and mandates found in Chapter 36, Texas Water Code, and brings those provisions to life in the Post Oak Savannah Groundwater Conservation District. The Board has set up a Rules Committee that crafts, studies, and reviews on an ongoing basis the District’s Rules to ensure that they are in line with Chapter 36, Texas Water Code, as it may be amended, together with the enabling legislation that created the District – all in an effort to ensure that nothing the Legislature has required of it is overlooked.”*
- Both my Predoctoral studies at The Johns Hopkins University and time as a tenured faculty member of the University of Texas Southwestern Medical School at Dallas ingrained in me that just because someone makes a self-serving statement similar to the one above made by Post Oak, it is considered unverified unless it can be documented.
 - Post Oak just throws it out there – and expects everyone to buy it.
 - Although Post Oak may claim that they are operating in compliance with the Texas Water Code and their enabling legislation – they can’t prove it. BUT their veracity can be easily challenged by finding instances where Post Oak is NOT “in line” with either its enabling legislation or the Texas Water Code. Two of those instances are below – they were found by a superficial search:

HB 1784 – Enabling Legislation:

- a. The following statement is from Section 3 of the Post Oak Management Plan:

*“The POSGCD was created in Milam and Burleson counties by HB 1784, 77th Legislature, 2001, and a local confirmation election in November 2002. The purpose of this bill is to provide a locally controlled groundwater district to conserve and preserve groundwater, **protect groundwater users**, protect and recharge groundwater, prevent pollution or waste of groundwater in the central Carrizo-Wilcox area, control subsidence caused by withdrawal of water from the groundwater reservoirs in that area, and regulate the transport of water out of the boundaries of the districts.”*

- b. In the above paragraph from their Management Plan, Post Oak states that HB 1784 includes “**protect groundwater users**” in the “purpose of the bill.” That is a **falsehood** which can be easily proven by comparing the above paragraph with the pertinent section of the Official Enrolled Version of HB 1784 copied below – “**protect groundwater users**” is **NOT** there:

“The Purpose of HB 1784 as stated in Section 1.02 of the Bill is: “(1) to ratify and create locally controlled groundwater districts in order to protect and recharge groundwater and to prevent pollution or waste of groundwater in the central Carrizo Wilcox area, to control

subsidence caused by withdrawal of water from the groundwater reservoirs in that area, and to regulate the transport of water out of the boundaries of the districts;...”

http://www.posgcd.org/wp-content/uploads/2015/01/Enabling-Legislation_77th_HB_17841.pdf

- c. **NOTE:** Interestingly, the phrase “protect groundwater users” is included in District Rule 16.4.

TEXAS WATER CODE:

Post Oak is not “in line” with the following provisions of Texas Water Code 36.154 – at least based on the “Annual Budget” they share at the Board Meetings. **NOTE:** An example of their secretiveness involving the budget = they won’t even release the names/salaries/benefits of their employees.

Sec. 36.154. ANNUAL BUDGET.

- (a) The board shall prepare and approve an annual budget.
- (b) The budget shall contain a complete financial statement, including a statement of:
 - (1) the outstanding obligations of the district;
 - (2) the amount of cash on hand to the credit of each fund of the district;
 - (3) the amount of money received by the district from all sources during the previous year;
 - (4) the amount of money available to the district from all sources during the ensuing year;
 - (5) the amount of the balances expected at the end of the year in which the budget is being prepared;
 - (6) the estimated amount of revenues and balances available to cover the proposal budget; and
 - (7) the estimated tax rate or fee revenues that will be required.

4. **Post Oak’s Response Brief – Page 3:** *“District Rule 16.3 conditions giving notice to well permittees upon the District’s Board determining it is appropriate to do so. Because the Board has not yet determined it is appropriate to notify the well permittees, the District was not required to send notifications to well permittees.”*

- The part of District Rule 16.3 to which Post Oak is referring follows:

“...then, as determined appropriate by the Board, the District will give notice to well permittees in the affected Management Zone(s) as provided in Rule 16.4.”

- When I read this defense for no action, I wondered if it embarrassed/irritated the Post Oak Directors. If they did not know that they were supposed to act on a motion to notify the well owners, citizens would be interested in knowing why. Or they could be embarrassed by the Brief suggesting that they knew of the requirement but did not consider it important to notify the well owners. Or they could be irritated that the Post Oak staff failed to notify them that Board action was required.
- In contrast to District Rule 16.3, the wording of District Rule 16.4 does not mention the Board and simply states that for aquifers exceeding Threshold Level 2 (which include the Simsboro, Carrizo, and Queen City):

“pending the results of Threshold Level 1 studies, the District will notify well owners of possible plans for curtailing groundwater production.”
- So, there are two possible conclusions about the need for Board approval to notify well owners about Threshold Exceedances: one is that it is required - while the second is that it is not required.
- ***Post Oak did not present any evidence that the Board ever knew about the District Rule 16.3 requirement or if the Board was ever asked to decide whether or not to notify well owners about the Threshold Exceedances.***
- The following example of information about District Rule 16.4 was presented at the December 2020 DFC Committee meeting. **Please note:** there is no reference that Board action is required before notifying well owners.

Rule 16.4. Actions Based on Monitoring Results

<u>Threshold 1</u>	<ol style="list-style-type: none"> 1. Perform studies to improve quantification of pumping effects, characterization of aquifer, and prediction of changes in future water levels 2. Evaluate options for possible curtailment to achieve management goals
<u>Threshold 2</u>	<ol style="list-style-type: none"> 1. Evaluate the Management Plan and rules regarding management zones, collection and analysis of monitoring data, and DFCs. <li style="background-color: yellow;">2. May notify well owners of possible curtailment of groundwater production
<u>Threshold 3</u>	<ol style="list-style-type: none"> 1. Conduct public hearing to discuss aquifer conditions. Develop a Response Action Work Plan to achieve DFCs and PDLs. 2. May reduce the maximum water production permitted per acre for the Management Zone and the water authorized to be produced under any permit issued by the District for that zone

25

- The following Table lists “District actions triggered by exceedance(s) of threshold levels.” “Conduct public meetings” is listed for Threshold Level 1 while “Notify well owners of possible plans for curtailing groundwater production” and “Will conduct public meetings” are listed for Threshold Level 2. There is no warning that board action is required – in fact, the Table’s title states that the actions are **“triggered”** by the Threshold Levels which indicates no Board action is required.

Table 7-2 Possible list of District action triggered by exceedance(s) of threshold levels

Threshold Level	District Actions if Threshold is Exceeded
1	<ul style="list-style-type: none"> • Perform studies to improve quantification of pumping effects, characterization of aquifer, and prediction of changes in future water levels. The studies will suggest possible schedules for reducing groundwater production in the affected management zones. • Conduct public meetings to discuss the Level 1 exceedance(s). •
2	<ul style="list-style-type: none"> • Re-evaluate the Management Plan and rules regarding management zones, collection and analysis of monitoring data, and DFCs. • Notify well owners of possible plans for curtailing groundwater production. • Will conduct public meetings to discuss the Level 2 exceedance(s).

Ref: https://posgcd.org/wp-content/uploads/2021/05/MS_Report-202_revised_draft2.pdf

- In another line of reasoning that undermines the credibility of Post Oak’s assertion that “the Board has not yet determined it is appropriate to notify the well permittees” is the fact that the first Threshold Exceedance occurred in 2018 – that is FIVE YEARS AGO (See following Table). And Post Oak wants us to believe that they have not determined it is “appropriate to do so” since 2018. It is difficult for me to believe that the Directors are so disrespectful of the citizens to have kept them in the dark for FIVE YEARS.

Calculated Compliance with DFCs: Tables

Management Zone	DFC	Drawdown from 2000 to 2010	Drawdown from 2000 to 2015	Drawdown from 2000 to 2016	Drawdown from 2000 to 2017	Drawdown from 2000 to 2018	Drawdown from 2000 to 2019	Drawdown from 2000 to 2020	Drawdown from 2000 to 2021
		Calculated Drawdown (% of DFC)	Calculated Drawdown (% of DFC)	Calculated Drawdown (% of DFC)	Calculated Drawdown (% of DFC)	Calculated Drawdown (% of DFC)	Calculated Drawdown (% of DFC)	Calculated Drawdown (% of DFC)	Calculated Drawdown (% of DFC)
Yegua Jackson	100	27.5	22.3	22.2	21.0	19.2	18.1	17.1	17.8
		27.5%	22.3%	22.2%	21.0%	19.2%	18.1%	17.1%	17.80%
Sparta	28	1.4	6.9	8.6	12.3	14.5	15.0	13.8	14.3
		5.0%	24.8%	30.6%	43.8%	51.8%	53.4%	49.3%	51.20%
Queen City	30	0.9	2.7	1.3	1.6	2.4	3.9	4.4	4.2
		3.0%	8.9%	4.4%	5.5%	8.0%	13.0%	14.6%	14.10%
Carrizo	67	-11.1	-4.3	-3.8	18.1	17.3	44.1	45.5	48.2
		-16.6%	-6.4%	-5.7%	27.0%	25.8%	65.9%	67.9%	71.90%
Calvert Bluff (Upper Wilcox)	149	-29.9	-34.6	-19.0	-27.0	-28.3	-28.4	-57.8	-56.5
		-20.1%	-23.2%	-12.7%	-18.1%	-19.0%	-19.1%	-38.8%	-37.90%
Simsboro (Middle Wilcox)	318	5.0	14.9	19.0	24.7	22.4	28.3	30.3	32
		1.6%	4.7%	6.0%	7.8%	7.0%	8.9%	9.5%	10.10%
Hooper (Lower Wilcox)	205	5.4	-1.3	2.2	3.6	-0.7	-0.5	3.0	10.7
		2.6%	-0.6%	1.0%	1.8%	-0.3%	-0.2%	1.5%	5.20%

Threshold 1 = 50% of DFC
 Threshold 2 = 60% of DFC
 Threshold 3 = 75% of DFC

The above summary of aquifers exceeding Thresholds was presented at a Post Oak August 2021 Public Hearing. The Sparta Aquifer exceeded Threshold 1 in 2018 and the Carrizo exceeded Threshold Level 2 in 2019. These Thresholds are based on comparison of drawdowns to the DFCs. Ref: <https://vimeo.com/585862476>

- All evidence points to the conclusion that the Board did not know that they were supposed to approve the notifications and it was never brought up at a Board meeting.
- But all of the above discussion concerning the need for Board action to alert well owners about impending water level drops may be academic, because I consider the most important evidence supporting my claim that Post Oak violated District Rules 16.3 and 16.4 by not notifying well owners is the direct transcription of the video recording of a December 2020 DFC Committee meeting where the notification issue is addressed (See Page 13 of Petition). NOTE: It is noteworthy that although this evidence was emphasized in the Petition, there is not one mention of the transcription in Post Oak’s Response Brief.
- In summary, the transcribed discussion provides the following critical points regarding notification of the well owners:
 1. Director Wise wanted to notify well owners about Threshold Exceedances.
 2. Although the general manager attempts to muddy the waters by correcting the director that only “permit holders” would be notified

not “well owners” and that different notification formats would be needed for historic users – Director Wise continued to press his belief that it is time to notify the permit holders.

3. Then the General Manager says that the following is “the reason I have not sent out any letters at this time”: *“One of the reasons that we have proceeded in the way we have is that our current MAGs for the Carrizo which is the reason we are at Threshold 2 are based on a DFC that we are already familiar with the fact that we’re not able to maintain that DFC. So in order not to start a process that will never proceed or progress, I thought it would be prudent to at least wait until our January meeting to issue that statement. By the January board meeting hopefully we will know what our new DFC on the Carrizo is and also maybe have an updated MAGS to deal with and maybe by board action necessitating an administrative change we may end up no longer being in Threshold 2.”*

- The above Point Number 3 reveals that the general manager believes that he unilaterally decides when to send out the “letters” which conflicts with Post Oak’s assertions about the Board’s role in such a decision.
- The verbatim transcript of the December 2020 DFC Committee’s meeting also highlights that the general manager’s comment “we may end up no longer being in Threshold 2” suggests he is not aware that once a threshold level is reached, the actions described in District Rules 16.4 and 16.6 WILL BE TAKEN IRRESPECTIVE OF ANY SUBSEQUENT CHANGES TO THE DFCS FOR THAT AQUIFER OR MANAGEMENT ZONE. This provision codified in District Rule 16.3 follows:

“Once a threshold level has been reached, the corresponding actions in Rules 16.4 and 16.6 will be taken irrespective of any subsequent change to the DFCS for that aquifer or Management Zone.”

- **NOTE: I file the following clarifications/objections at this point:**
 - ✓ On Page 8 of the Office of the Public Interest Counsel’s brief, he reviewed Post Oak’s progress regarding DFCS, declares that while Post Oak *“has not provided notice to well owners at this time, this inaction appears to be reasonable given that the District has engaged a professional hydrologist to conduct studies and address concerns regarding the threshold exceedances. OPIC is confident that when the District completes its studies and its Board determines it is appropriate to do so, it will issue the required notice in compliance with its rules.”*
 - ✓ I am not sure how to respond to these comments – I believe that the comments indicate possible bias in favor of Post Oak since the words indicate the Counsel believes Post Oak can do no wrong as highlighted by “OPIC is

confident that when the District completes its studies and its Board determines it is appropriate to do so, it will issue the required notice in compliance with its rules.” It has been FIVE YEARS since the first threshold exceedance was reported – and Post Oak has made NO attempt to notify well owners and citizens. Any way you look at it – this is a breach of fiduciary duty and does not deserve to be adulated.

5. **Post Oak’s Response Brief – Page 3** *“The District provided regular updates at properly noticed public DFC Committee and Board meetings. Further, the District and/or its professional consultants are in contact with well permittees personnel on an ongoing basis and they were keenly aware of thresholds being reached; many of their representatives have attended all or nearly all public meetings in which DFCs and the District’s Management Plan have been discussed – from Committee meetings to Board meetings. The studies that the District has undertaken have been through the District’s professional hydrogeologist and the team at Intera. Finally, as Petitioner has noted and thoroughly utilized in crafting this Petition, the studies are on the District’s website, available 24/7. Numerous public meetings have been held on the very topic that Petitioner has raised; such meetings began no later than August 2017 and are continuing through today.”*

- Although not clearly stated by Post Oak, I believe that the above excerpt is meant to provide evidence that the meetings required by District Rule 16.4(4)(a) and (b) were held.
- The pertinent parts of District Rule 16.4 are presented below:
 - a. District Rule 16.4 (4) (a): *“If Threshold Level 1 is exceeded...The District will hold one or more public meetings and provide a minimum of 90 calendar days for the public to provide written comments in addition to the meeting(s).”*
 - b. District Rule 16.4 (4) (b): *“If Threshold Level 2 is exceeded...As part of the re-evaluation, the District will hold one or more public meetings and provide a minimum of 90 calendar days for the public to provide written comments in addition to the meeting(s).”*
- Post Oak wants us to believe that the “public DFC Committee and Board meetings” satisfy the meeting requirements codified by District Rules 16.4(4)(a) and (b). That is not what the District Rules require. As the above excerpts from District Rule 16.4 clearly state, the District has to “provide a minimum of 90 calendar days for the public to provide written comments in addition to the meetings.” There is NO MENTION of “provide written comments” in Post Oak’s Response. It is clear that District Rule 16.4 requires special meetings to address the Threshold Exceedances followed by a written comment period. Those requirements are not met by attendance at general committee and board meetings. Post Oak is in violation of District Rule 16.4.