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## LCCN Testimony

### Monthly Meeting of the Lone Star Conservation District Board of Directors

March 8, 2016

My name is Michael Massey. I and my fellow LCCN officers/board members are here to present and discuss LCCN's 2015 Petition Drive and its overall findings.

### Unprecedented Community Petition Participation Rate

An unprecedented 3,100 members of the Montgomery County community signed an LCCN Petition (copy attached here; signature records available at LCCN) which sought to:

- Suspend restrictive 2016 groundwater use regulations that are driving complete dependence on alternative, and very expensive, water for most existing and virtually all new water demand
- Re-assess the health, environmental and economically practical/sustainable capacity of Lake Conroe, a surface water source that is incredulously a key factor in the viability of the Lone Star groundwater regulatory plan -- this time with the real and complete participation of the local community.

The community at large neither embraces Lone Star's basis nor accepts its actions to restrict groundwater use in the county. Furthermore, the community rejects Lone Star's reliance on a set of "alternative water" resources and scenarios for their supply which devastate all traditional aspects of the county's water resource management system and severely threaten the health and economic development potential of the county and the region. Lone Star's regulations:

- Force the establishment of Lake Conroe as the first/primary source of alternative water – with a clearly stated policy to destructively consume the entire permitted annual withdrawal rate of 100,000 ac-ft/yr.
- De facto establish SJRA as the monopoly controller of all water resources in the county – both current and future:
  - Surface water -- for which it has at least some accountability within its 1937 state chartered mission "to develop, conserve, and protect the water resources of the San Jacinto River basin" -- and
  - Groundwater -- which is totally outside the scope of its state chartered mission and unacceptable mission creep even for a governmental agency.

In our last presentation to the Board in June of 2015, LCCN made clear that any action to carry through with regulations would produce the above effects AND would result in illegal regulatory structures that would not survive challenge. Since then, the City of Conroe and a set of private water producers have sued Lone Star (August 30, 2015) challenging the legality of the foundation and structure of the regulations. While Lone Star has so far sought to block the movement of that suit at every turn, the Court/Judge are now in place and will soon begin hearing Plaintiffs' Motion for Summary Judgment.

When fully prosecuted, the lawsuit will put an end to Lone Star's 2016 regulations on purely legal grounds. However, there will remain a longstanding set of critical issues that finally must be faced up to, addressed and resolved before new plans for regulatory development can be considered and developed. These issues are:

- FALSE PREMISES: Sorting out valid vs false premises for regulation
- CONFLICTS OF INTEREST: Recognition/resolution of long standing, still continuing conflicts of interest that plague Lone Star's board and its decision-making

Only then can the county expect to return to simple, rational water resource management policies and operating protocols that have the active and engaged support of local county government, business and residents.

## **Critical False Premises Continue**

Outside of the board and its immediate contractors, there is no longer substantive technical support for any of the following regulatory premises in the community.

### **1. Land Surface Subsidence**

Critical Role of Subsidence in Regulation: Land surface subsidence was the first and primary argument for Lone Star's draconian groundwater regulations. Without it, the sense of a groundwater crisis and any urgency to take drastic measures to resolve it WOULD NEVER HAVE GAINED TRACTION.

High Water Mark 2005: In 2004/5, the USGS reported model results that projected major land surface subsidence throughout Montgomery County over a forecast period from 2010 through 2030. Consensus quickly formed at Lone Star around those USGS findings as "best available science". Lone Star: "Unless checked by major reductions in groundwater use, subsidence will grow and propagate across the county, reaching levels as high as -13 ft in Conroe by 2030". This was an unfortunate projection of fundamentally false science.

Total Loss of Subsidence as a Factor by 2009: USGS did not maintain its initial "best available science" position very long. By 2009, they had reviewed measured data, recognized unique deep aquifer differences (Montgomery County) relative to shallow aquifers (Harris/Galveston Subsidence District), recognized modeling errors and made corrections. In an unbroken series of reports since then, USGS has reported only nominal subsidence anywhere in the county. What little they report is clustered at the southern border and cast primarily as carryover from longstanding shallow aquifer development in Harris County. Because of the geometry of the shallow aquifers, Montgomery County

cannot, and will never have concerns with subsidence comparable to those in the neighboring counties to our south: Harris, Fort Bend and Galveston.

#### Critical Developments AFTER Loss of Subsidence as a Basis:

- Nov 2009: Lone Star sets rules for severe 2016 restrictions on the use of groundwater
- 2010: SJRA launches its GRP and fights to sign up 80% of water production in the county, most notably the City of Conroe
- 2011-2012: With TWDB's major help, SJRA sells ~\$550 million in bonds and incurs another \$400 million in associated debt service over 30 years to support Phase I of its four phase Lake Conroe "alternative water" development plan.

All involved knew or should have known throughout this time that USGS's "best available science" no longer supported these efforts. They proceeded anyway, in many cases forcing their will on resisting water management systems large and small across the county. And the costs of the resulting "alternative water" are already more than 10 times the cost of comparable groundwater development. Lone Star effectively squandered one of Montgomery County's precious competitive economic advantages for development (its abundance of environmentally sound groundwater) relative to its neighboring counties in the metropolitan Houston region.

## **2. Aquifer Depletion**

There has never been substantive evidence that any of Montgomery County's aquifers (Chicot, Evangeline, Jasper, Catahoula) have historically lost any material fraction of their natural storage in over 100 years of use. And there is no evidence that expected use without 2016 regulatory caps will significantly change storage over the next several decades.

Cones of influence around county wells in and of themselves:

- DO reflect local well production rates
- DO NOT reflect a shortage of aquifer recharge

Physics dictates that increased demand for groundwater can only be met with increased localized cones of influence around producing wells. Until there is consistent evidence of significant impacts of such localized cones of influence on total aquifer storage, we simply are not running out of groundwater, and proposed restrictive regulations arbitrarily prevent the county from accessing critical resources for its health and economic development, LCCN notes that restrictive regulations are often defended with the label of "conservation". Lone Star's restrictive regulations may conserve groundwater, but they do not conserve surface water and most importantly do not conserve money for Montgomery County.

## **3. Excessive, Burdensome Well Engineering Costs**

Only the SJRA Woodlands Division (its local groundwater utilities division) has ever seen and argued "excessive well engineering costs" associated with the management of county groundwater wells. Virtually all of the county's other utility operators anticipate and deal

regularly with the costs of adjusting to increasing demands for well production as population grows, notably larger cones of influence around producing wells. No one sees well engineering costs that begin to rival the costs of “alternative water” that are required under Lone Star’s rules and SJRA’s GRP Division. Capping groundwater production to stop otherwise rising cones of influence around individual operating wells simply cannot be justified in the face of the resulting costs for “alternative water” production.

## **Severe, Persistent Conflicts of Interest Continue**

The 2015 Texas Legislature (SB-2049) finally removed the unexplainable and indefensible “Waiver of Liability” clause (HB2362, Section 6(h)) that had existed since Lone Star’s 2001 enabling legislation. Effective September 1, 2015, all entities and individuals associated with the Lone Star Groundwater Conservation District are subject to the State’s longstanding statutes regarding conflict of interest. Despite this clarion call for a redressing of longstanding open conflicts of interest within the Board of Lone Star, no consideration has yet been given. Despite loud calls from outside of Lone Star, it remains business as usual. Note that any credible and valid addressing of these issues must, by definition, emanate from and be due processed outside of the domain of the Lone Star Board.

### **1. SJRA’s new business division – the GRP Division**

The very mission of this division puts any board involvement from SJRA in direct, irreconcilable conflict with the entire mission of the board:

“**GRP Division** – Located at the Lake Conroe Dam, the Groundwater Reduction Plan Division is responsible for implementing a countywide program that will meet the requirements of the Lone Star Groundwater Conservation District to substantially reduce future groundwater usage from the Gulf Coast Aquifer by ensuring a reliable, long-term diversified portfolio of alternative water supply sources for all of Montgomery County.”

This helps to explain SJRA’s domination of board operations since Lone Star’s inception, a domination whose intensity is currently greater than ever.

For the record, back in 2009-2012 there were many other options available to Lone Star and the community at large for recovering the \$ 1 billion total cost of the Phase I Lake Conroe drinking water project. As little as a 30 year, ~50 cents/1,000 gal surcharge on all groundwater production in the county would pay the countywide fair share portion (~50%) of the project<sup>1</sup>. The monopoly-wielding GRP Division powers were never necessary. They could have been completely avoided – and still can be.

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<sup>1</sup> The rest would be earned through fees for the purchase of the “alternative water” by those who actually consume it.

## 2. SRJA's Utility Division – the Woodlands Utility

The Woodlands Utilities are represented on the Lone Star Board twice, once in the form of SJRA and once in the form of the Woodlands Joint Power Agency. Both are predicated on major “alternative water” production driven by restrictive groundwater regulations. Both lose by any relaxation of current restrictive rules.

Despite its obvious conflicts, SJRA (as groundwater utility) indefensibly dominates all discussion of groundwater well engineering within and outside the Lone Starr board. This has been true since Lone Star's inception and continues unabated to this day.

### Summary & Closing

- Responsible and effective shepherding of the county, region and State's interests in water resources can ONLY occur with a firewall of separation between the basic charters, management protocols and practices of the two core elements involved – surface water and groundwater.
- LCCN calls for Lone Star to focus solely on groundwater and to implement defensible groundwater regulations that tie their work to truthful aquifer science and that provide fair and equal choices for all groundwater utility operators.
- LCCN calls for recognition of
  - the true economic costs/benefits of surface water system management in the 2030 modern era of regional, county and San Jacinto River Basin development (vs ancient history of initial planning in the 1950's) and
  - the rapidly escalating importance of stable Lake Conroe reservoir water levels to county and regional health and economic development.
- LCCN demands that the conflicts of interest on Lone Star's board be removed as a critical step in the separation of surface and groundwater charters and management in Montgomery County.

Only with such steps, can Lone Star stop forcing economic choices that benefit certain water users at the cost of others who receive no benefits. With these steps, science and rapidly changing economics can be truly accounted for and Lone Star can get back to supporting environmentally responsible development of groundwater resources that protect the rights of all of Montgomery County.



For Release at  
LCCN Town Hall Meetings  
April 28 & 29, 2015

**Questions:**  
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## LCCN PETITION

LCCN intends to present, deliver and discuss this petition on behalf of the Greater Lake Conroe Region (GLCR) community in person to at least the following organizations:

- Board of Directors, Lone Star Groundwater Conservation District
- County Commissioners Court (4 precinct commissioners and judge)
- The five Texas Legislators with jurisdiction in the County (two senators, 3 representatives).

**We**, the undersigned, strongly request that the Lone Star Groundwater Conservation District suspend the January 1, 2016 implementation of its District Regulatory Plan to provide the necessary time and the resources and to insure the employment of methods that engage the full participation of the community in determinations of each the following:

1. **S**eparate capacities of each of the Montgomery County aquifers to continue safely contributing to the current and growing water needs of the county;
2. **E**conomic viability, practicality and sustainability of alternative sources (including county surface water, non-county surface water transfer, new groundwater and water reuse) to resolve rapidly rising shortages in water supply (100,000 acre-ft/yr by 2035) resulting from impending groundwater restrictions coupled with exploding population growth (doubling by 2035) and
3. **R**ole and effectiveness that conservation can/should play in limiting use of both county surface and groundwater to that necessary for the community's sustainable economic health and development.