
The Vista Ridge Project: Vista Buena or Vista Mala?

A position paper on San Antonio's proposed
"Vista Ridge" water project.

November 18, 2015

Endorsed by:

**Alamo Sierra Club
Bexar County Green Party
Central Texas Aquifers Coalition
Clean Water Action
Environment Texas
Environmental Stewardship
Esperanza Peace and Justice Center
Greater Edwards Aquifer Alliance
League of Independent Voters of Texas
Lost Pines Water Defense Fund
Martinez Street Women's Center
Neighbors for Neighbors
Save Our Springs Alliance
Texas Organizing Project
Westside Preservation Alliance
Wimberley Valley Watershed Association**

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Endorsed by 16 community organizations from across the region (with more signing on). Go to www.NoVistaRidge.org for more information, links to the source documents referenced herein, and an updated list of the organizations endorsing this white paper.

Executive Summary

Last November the City of San Antonio inked a contract that, if fully executed, would commit the city to purchase up to 50,000 acre-feet of water per year for 30 years at an estimated cost of \$3.4 billion. The project, with Spanish firm Abengoa and Texas-based BlueWater Systems, calls for pumping groundwater from wells in Bureson County, northeast of Austin, through a new 142-mile long pipeline to a delivery point on the north side of San Antonio.

San Antonio's mayor, City Council members, Chamber of Commerce representatives, and water utility hail the "Vista Ridge project" as providing secure, affordable, non-Edwards water for San Antonio Water System (SAWS) ratepayers and for future generations of San Antonio residents. However, a closer look at the arguments in support of Vista Ridge reveals they simply don't hold water.

- **SAWS has stated that the Vista Ridge water will not be needed for many years, and is intended for new development.**
- **SAWS professional staff previously rejected Vista Ridge and instead recommended expanding local, brackish groundwater desalination incrementally on an "as needed" basis. This remains a better option than the one advanced by lobbyists for Vista Ridge because it is a more affordable, and flexible water project.**
- **Vista Ridge is inequitable because it forces current ratepayers to foot the entire bill for massive amounts of water they don't need, while new development avoids impact fees and stands ready to buy "excess" Vista Ridge water at discounted rates.**

- **Vista Ridge pumping will significantly harm the Carrizo and Simsboro aquifers, the streams to which these aquifers contribute, and the communities that depend on these waters for one simple reason: the pumping rate will vastly exceed the recharge rate, leading to mining of the aquifers.**
- **Vista Ridge water is not secure and reliable for several reasons, including the fact that the proposed pumping amounts will surpass Levels 1 and 2 of the groundwater district's thresholds for action to reduce pumping on the first day that Vista Ridge water starts flowing to San Antonio.**
- **San Antonio *must* accept and pay for water that is delivered regardless of need. SAWS plans to sell excess water to offset the high costs of Vista Ridge. Hill Country developers are among those interested in new water supplies. This means SAWS' plan to offset costs will be pitted against protecting the Edwards Aquifer from development and pollution.**
- **The excess water will discourage conservation. SAWS is already marketing San Antonio as "Water City" with an "abundant" water supply.**
- **The energy requirements for pumping water 142 miles uphill conflicts directly with San Antonio's climate protection goals and moral obligations to reduce greenhouse gas emissions.**
- **SAWS has not been honest about Vista Ridge. No thorough, written analysis of the financial, social, economic, and environmental impacts of the project has been made available. PowerPoint slides do not substitute for meaningful due diligence.**
- **The City Council has failed to require SAWS and Abengoa to disclose and discuss all relevant information in an open and transparent public engagement process. As a result, the people and communities of seven counties affected by Vista Ridge do not have a clear picture of the project's benefits and costs.**

In light of the above deficits, the San Antonio City Council should withdraw from the Vista Ridge project immediately.

If the San Antonio City Council will not immediately withdraw from the Vista Ridge contract, at a minimum, the Council should refrain from closing the contract with Abengoa Vista Ridge until SAWS and Abengoa disclose all relevant information and conduct an open, transparent due diligence and public engagement process – one that examines all of the benefits and costs imposed on communities, ratepayers, property owners, and the environment, from the source water communities to San Antonio.

The Vista Ridge Water Supply Project

Is the Vista Ridge project about water or pork? Are those who will pay for it, and those who may be harmed by it, being told the truth? Or is Vista Ridge a pig in a poke—a deal rushed through, lacking in standard due diligence practices and transparency? This position paper attempts to answer as many of these questions as possible—questions that were not answered before the deal was signed in November 2014.

1. What is the Vista Ridge project?

The Vista Ridge project is a contract between the City of San Antonio (“the City”) and Abengoa Vista Ridge, LLC to pump 50,000 acre-feet/year of groundwater from wells in Burleson County, northeast of Austin, to San Antonio for 30 years. That’s about 16.3 billion gallons of water from the Carrizo-Wilcox Aquifer every year, or enough water for more than 300,000 people per year. The proposed pipeline route is displayed in Figure 1.



Figure 1: The proposed Vista Ridge Pipeline route.¹

¹ SAN ANTONIO WATER SYSTEM, available at http://www.saws.org/your_water/waterresources/projects/vistaridge/.

a. The Vista Ridge project team and the nature of the project.

Abengoa Vista Ridge, LLC (“Abengoa Vista Ridge”), incorporated in Delaware and based in Austin, is a “special purpose vehicle” formed for a single purpose – to finance and oversee construction of the Vista Ridge water supply pipeline. Abengoa, S.A., the Spain-based parent company, formed Abengoa Water USA, which in turn formed both Abengoa Vista Ridge, LLC and Abeinsa, Abengoa’s business unit dedicated to engineering, construction, and concession-type infrastructure. Abengoa Vista Ridge will be responsible for the approximate \$885 million in capital costs associated with the construction of the project’s wells, pipeline, pump stations, and other facilities. Abengoa Vista Ridge is currently attempting to acquire the necessary capital but, as far as is known, has not yet secured financing for the project.

Abengoa, S.A. will reportedly put some \$82 million of its own funds into the project. While Abengoa Vista Ridge’s stated primary intent under the contract is to seek long-term tax-exempt “private activity bonds” in the public market, it also acknowledges that it may have to seek alternative initial financing in either the public or private capital markets.²

Private activity bonds (PABs) are tax-exempt bonds issued by a governmental entity and secured by the project’s revenues (such as income from selling water), but unlike traditional governmental revenue bonds, PABs are to finance a project for a *private* company so long as the company can demonstrate a public purpose to the project.

In the case of the Vista Ridge Project, Abengoa Vista Ridge has applied to the Mission Economic Development Corporation (“Mission EDC”) to issue its private activity bonds and loan proceeds of the bonds to Abengoa.³ Repayment of the loan, and the bonds, would be secured by Abengoa’s revenues from selling water to SAWS. Mission EDC passed a resolution agreeing to seek PABs on behalf of Vista Ridge.⁴ How and why Mission EDC would issue bonds for Vista Ridge raises serious questions. Mission EDC is based in Hidalgo County near the Texas-Mexico border, hundreds of miles from the project. As far as is known, Mission EDC has no operations in the project area and no accountability to communities in the region affected by the Vista Ridge project.

² Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (hereinafter “WTPA”), Appendix 16, A16-2 – A16-3 (Nov. 4, 2014), *available at* http://www.saws.org/your_water/waterresources/projects/vistaridge/docs/201502_SAWS_VistaRidge_WaterTransmissionAndPurchaseAgreement_FINAL.pdf.

³ Mission EDC has, in turn, applied to the Texas Bond Review Board for a share of the federally-regulated annual volume of permitted private activity bonds for water projects in the State.

⁴ Mission Econ. Dev. Corp., Res. 2015-01, Apr. 21, 2015, *available at* www.NoVistaRidge.org

Under Texas law, if Mission EDC were to finance a project like Vista Ridge that is not located within the jurisdiction of Mission EDC, the governing bodies of local governments where the project is actually located would have to request – essentially, approve – that Mission EDC take action to finance the project. In the case of the 142-mile pipeline, the governmental units all along the pipeline would have to make such a request.

Much to the ultimate embarrassment of SAWS, SAWS and Abengoa tried and failed in the last legislative session to achieve an exclusive, last-minute waiver for Vista Ridge of the approval requirement, an attempt which fueled an unexpected rural-urban coalition of opposition to what was widely perceived as an end run on the legislative process.⁵ Had this move succeeded, voters, cities, and counties affected by the Vista Ridge project would have lost their ability to influence the proposed private activity bond financing.

The Texas Attorney General's office must approve the issuance of private activity bonds. Passage of the City of San Antonio proposed rate increases (scheduled for a vote by City Council on November 19, 2015), as opposed to a contractual promise by San Antonio to raise rates prospectively, is required by the AG in order to demonstrate that (1) Abengoa Vista Ridge will have sufficient revenues to pay its private activity bonds, and (2) San Antonio in turn will have sufficient revenues to pay all of its revenue indebtedness, including the entirety of its pecuniary liability under the Vista Ridge contract (in each case referred to as the "bond allowable test"). Satisfaction of both conditions as of the date of "financial closing" of the contract (as well as each time after financial closing that SAWS itself issues new bonds) is a prerequisite to the AG's approval of Vista Ridge private activity bonds. SAWS acknowledged to the AG's office that the latter may require additional City Council rate action, a fact that SAWS has failed to mention in the run up to the November 19 council vote.⁶

BlueWater Systems, LP ("BlueWater"), a private company based in Austin and a member of the Vista Ridge Consortium, now controls the Vista Ridge water leases in Burleson County. However, the leases themselves were not originated by BlueWater. Instead, the bulk of leases now held by BlueWater and used to support the Vista Ridge permit, were originally solicited by Scott Carlson, the principal owner of Metropolitan Water Company ("MetWater") based in Brenham, Texas.

⁵ Debate on Tex. H.B. 928 on the Floor of the Senate, 84th Leg., R.S. (May 31, 2015) *available at* http://tlcsenate.granicus.com/MediaPlayer.php?view_id=30&clip_id=10363 (Part I, discussion begins at approximately 1:42:10); http://tlcsenate.granicus.com/MediaPlayer.php?view_id=30&clip_id=10365 (Part II, discussion continues at approximately 20:25).

⁶ Letter from Clay Binford, on behalf of San Antonio Water System, to Public Finance Division, Attorney General for the State of Texas (Sept. 22, 2014) *available at* www.NoVistaRidge.org.

Carlson pled guilty to theft of over \$2.3 million from his former employers in 2002, shortly before becoming a water marketer. The extent of Carlson's continued financial interest in the leases, and the numerous objections to his methods of obtaining groundwater leases raised by some Burleson and Milam county landowners, have never been revealed or even acknowledged by SAWS, BlueWater, or Abengoa Vista Ridge. However, Carlson's role in the Vista Ridge project was the subject of a 2014 letter to the San Antonio City Council from Dr. Curtis Chubb, a respected journalist on water issues in Milam and Burleson counties,⁷ and a 2006 San Antonio Express-News article.⁸

The water will be pumped pursuant to a "production permit" for 50,993 acre-feet/year issued to BlueWater by the Post Oak Savannah Groundwater Conservation District ("POSGCD"), which regulates groundwater in Milam and Burleson Counties. POSGCD has approved the assignment of that production permit, and BlueWater has assigned its lease rights to Abengoa Vista Ridge. The leases themselves have been placed in a trust for the life of the contract.

Scott Carlson pled guilty to theft of over \$2.3 million, shortly before becoming a water marketer. Water leases he negotiated are now part of the Vista Ridge project.

According to POSGCD's rules, production permits are based on correlative rights and allow pumping of up to two acre-feet/year for each (contiguous) acre of land for which the permit holder holds water rights.⁹ Under the Vista Ridge contract, BlueWater has covenanted to dedicate 25,000 (contiguous) acres of leased water rights to support the 50,000 acre-foot delivery commitment that Vista Ridge has in turn made to San Antonio, as well as an additional 25,000 acres (50,000 acres total) required to be held in reserve.¹⁰

BlueWater, which is controlled by Ross Cummings and which has formed its own special purpose Texas limited liability company, Blue Water Vista Ridge, LLP, has not disclosed its investors; thus it is not known who besides Cummings and Abengoa Vista

⁷ See Curtis Chubb, *Open Letter: A Critical Look at the SAWS-Vista Ridge Contract*, THE RIVARD REPORT (Oct. 18, 2014), <http://therivardreport.com/open-letter-closer-look-saws-vista-ridge-contract/>.

⁸ Joseph S. Stroud, *Underground Water Will be Valuable Commodity, Some Say*, SAN ANTONIO EXPRESS-NEWS (Aug. 20, 2006), <http://corridornews.blogspot.com/2006/08/texas-law-offers-landowners-no.html>.

⁹ Post Oak Savannah Groundwater Conservation District, District Rule § 5.1(2), available at <http://www.posgcd.org/district-information/district-rules/> (amended April 8, 2008) ("Excluding wells operated pursuant to an historic use permit, in no event may a non-exempt well or well system be operated such that the total annual production exceeds 2 acre feet of water per contiguous acre owned or controlled by the landowner, well owner, or well operator, as applicable.").

¹⁰ WTPA, Reference Document 3, Groundwater Lease Conveyance Agreement, 1 (Nov. 4, 2014) available at http://www.saws.org/your_water/waterresources/projects/vistaridge/docs/201502_SAWS_VistaRidge_WaterTransmissionAndPurchaseAgreement_FINAL.pdf.

Ridge will reap millions in profit paid by SAWS ratepayers.¹¹ However, the typical MetWater form lease believed to have been signed at Scott Carlson’s urging by many Burleson and Milam county landowners probably assures those landowners will not share in much of those profits, if at all.

The promise of the form lease to pay landowners a royalty of “10% of the profits from the sale of water *at the wellhead*” (emphasis added) will likely result in reductions to the royalty for pre-production and post-production expenses but without benefit of the profits received as the water is sold and re-sold to affiliated middle men on its way to San Antonio.¹²

Abengoa Vista Ridge created the Central Texas Regional Water Supply Corporation in order, *inter alia*, to procure easements for the 142-mile pipeline and the necessary pump stations. Water supply corporations (WSCs) are nonprofit corporations governed by a board of directors.¹³ Typically a WSC serves a neighborhood or area with water and its board is elected by its ratepayer-customers (members) in the WSC’s service area. In Texas, water supply corporations have the power of eminent domain.¹⁴

Here, Central Texas Regional WSC was established in September 2014 “for the San Antonio Water System and its customers and for any other entities as directed by the San Antonio Water System.”¹⁵ Its only member was Abengoa Vista Ridge, LLC, its registered agent was Abengoa Water USA, and its three initial directors were all

**Central Texas Regional
Water Supply Corporation
was created and controlled
by Abengoa Vista Ridge to
exercise eminent domain.**

affiliated with Abengoa.¹⁶ One year later, Central Texas Regional WSC expanded its service area to include “the central Texas region, being a service area of at least four counties.”¹⁷ Which counties the Central Texas Regional WSC plans on serving is unknown. What is known is that the WSC is controlled by Abengoa Vista Ridge, and has contacted hundreds of landowners for right-of-entry and right-of-way agreements for

¹¹ Although in an August 6, 2014 letter to SAWS, BlueWater Systems did disclose its five partners owning five percent or more of the partnership: Joseph J. Ritchie, Naperville, IL; Ross M. Cummings, Austin, TX; Keith Dickson, Hermosa Beach, CA; M. Buckner Baccus, Wimberley, TX; and Bruce Hill and family, San Antonio, TX, *available at* www.NoVistaRidge.org.

¹² Judon Fambrough, Attorney, The Real Estate Center at Texas A&M University, Presentation to POSGCD Board of Directors about Negotiating a Water Lease (Aug. 2014) *available at* <http://www.posgcd.org/wp-content/uploads/2014/08/Negotiating-a-Water-Lease-Judon-Fambrough.pdf>.

¹³ See TEX. WATER CODE §§ 67.001-67.017; TEX. BUS. ORGS. CODE §§ 22.001-22.409.

¹⁴ TEX. WATER CODE § 49.222(a) (“A district or water supply corporation may acquire by condemnation any land, easements, or other property inside or outside the district boundaries, or the boundaries of the certificated service area for a water supply corporation.”).

¹⁵ Certificate of Formation of the Central Texas Regional WSC, art. IV (Sept. 25, 2014), *available at* www.NoVistaRidge.org.

¹⁶ *Id.* at arts. V-VII (Sept. 25, 2014) (initial Board of Directors were: Joaquín Abaurre Benjumea, Pedro Almagro Gavilán, and Juan Carlos Felio de Haro, all listed at Abengoa Water USA’s address: 2600 Via Fortuna, Suite 220, Austin, TX 78746), *available at* www.NoVistaRidge.org.

¹⁷ Restated Certificate of Formation of the Central Texas Regional WSC, art. IV (Sept. 18, 2015) (with New Amendments), *available at* www.NoVista.Ridge.org.

securing the pipeline route, through voluntary sales or condemnation for the benefit of a private, for-profit entity.

SAWS recently revealed the possibility of a broader role for Central Texas Regional WSC, instead of Abengoa Vista Ridge, as the financing vehicle for all or part of the Vista Ridge project.¹⁸

A non-profit WSC is an approved borrower for certain water financing programs of the Texas Water Development Board (“TWDB”), which has the authority to make loans on either a taxable or tax-exempt basis to WSCs. With the expected inclusion of the Vista Ridge contract first in the 2016 South Texas Regional Planning Group regional water plan and then in the 2017 State Water Plan, Central Texas Regional WSC would be an eligible recipient of State financing through TWDB, under the SWIFT/SWIRFT bond program established as a result of the 2013 passage of Prop 6. Substitution of Central Texas Regional WSC as the financing vehicle is contemplated under the contract. It is not known whether or why SAWS might be orchestrating this shift in financing, although it is possible TWDB financing is being considered for the project’s permanent, post-construction financing.

Also included on the Vista Ridge project team are Pape Dawson Engineers, Inc., CP&Y Engineers, Garney Construction, and R.W. Harden & Associates, all private companies contracted to handle engineering, construction, hydrology, geology, and other aspects of the project. Gene Dawson, Jr. of Pape Dawson has been a leading lobbyist and public proponent for the Vista Ridge project, and even acted as the chief negotiator of the contract for Abengoa after its response to SAWS’ request for proposals was first rejected and then resurrected in March 2014.

The 700+ page Vista Ridge contract is a “take *and* pay” contract. Whatever water is delivered, up to 50,000 acre-feet/year, San Antonio must accept and must pay for. Once the pipeline is constructed and water is delivered, which SAWS estimates will be in 2020, SAWS will begin paying approximately \$2,200-2,300 per acre-foot.¹⁹ At 50,000 acre-feet/year, this totals at least \$110 million per year, or \$3.4 billion for the 30-year contract. After thirty years, ownership of the pipeline and infrastructure will transfer to SAWS. SAWS is then expected to buy water directly from BlueWater for an additional thirty years.²⁰

Although the cost of the “raw” water is fixed in the contract, SAWS has not included all of the costs in its overall estimate of the Vista Ridge water. The \$3.4 billion price tag

¹⁸ Region L Planning Group Meeting (Nov. 5, 2015) *available at* <http://www.regionltexas.org/current-planning-effort/4th-cycle-planning-efforts-2016-rwp/2015-rwpg-meetings/> (minutes are not posted at the time this paper was published but are anticipated).

¹⁹ The Contract fixes “raw” water costs at \$1,852 to \$1,959 per acre-foot. WTPA at 140-41; SAWS adds the raw water cost to estimated O&M (\$175/AFY) and pumping (\$173/AFY) for a total estimate of \$2,200-2,300 per acre-foot.

²⁰ Robert R. Puente, President-CEO, SAWS, Presentation to SAWS Board of Trustees (Sept. 22, 2014), *available at* www.saws.org/your_water/waterresources/projects/vistaridge/docs/20140922_SAWSBoardBriefing_VistaRidgeContract.pdf.

includes an estimated operation and maintenance (“O&M”) cost of about \$175 per acre-foot, and pumping costs of about \$173 per acre-foot.²¹ The estimate does NOT include costs of integrating the new water into the existing distribution system (estimated separately at \$125-240 million),²² the cost of a reserve fund for major maintenance,²³ or O&M costs for additional infrastructure needed for integration, which together could increase the price per acre-foot by 20% or another \$440-510 per acre-foot.²⁴

The cost of Vista Ridge water is approximately four to seven times higher than that of Edwards Aquifer water (currently Edwards water costs \$331-541 per acre-foot, depending on drought management) and almost twice the cost of the most expensive Carrizo water from Gonzales County (currently \$1,225 per acre-foot).²⁵ Additionally, the cost of the Vista Ridge water will likely increase with energy rate changes and inflationary pressures on O&M costs.

The \$3.4 billion Vista Ridge price tag does not include integration or a major maintenance reserve fund, which could increase costs to SAWS by 20%.

b. The source aquifers

The water will be pumped from the Simsboro and Carrizo aquifers, part of the Carrizo-Wilcox Aquifer system. The Carrizo-Wilcox Aquifer is a major aquifer in Texas that underlies 66 Texas counties, including the following counties that are closest to the Vista Ridge well fields: Burleson, Milam, Lee, Bastrop, Brazos, and Caldwell.

The system is composed of sand, silt, and clay. This type of aquifer is much slower to recharge than the Edwards Aquifer, which is a highly porous limestone formation. The outcrop, or the “recharge zone,” generally runs along the western edge of the Carrizo-Wilcox Aquifer and is connected to the shallow portion of the aquifer. The down dip, or the “artesian zone,” generally runs along the eastern half of the Carrizo-

²¹ *Id.*

²² Quintin Pollok, P.E. Project Engineer & Andrea Beymer, P.E., Interim Director, SAWS, Presentation to SAWS Board of Trustees about Water Infrastructure Plan & Vista Ridge Integration (Aug. 4, 2015) *available at* www.NoVistaRidge.org (Integration requires treatment facilities, a new pump station, new ground storage tanks, upgrades to existing pump stations, and approximately 82,000 feet of new pipe.).

²³ WTPA, 141-42; Appendix 19, A19-2, *available at*

http://www.saws.org/your_water/waterresources/projects/vistaridge/docs/201502_SAWS_VistaRidge_WaterTransmissionAndPurchaseAgreement_FINAL.pdf.

²⁴ Depending on interest rate assumptions and duration (25-30 years) of bonds, integration would add between \$268 to \$335 per acre-foot. The reserve fund for major maintenance is stipulated in the contract, but no estimate of size is listed. This calculation assumes 1% of total capital costs per year, which adds \$176 per acre-foot. Without O&M for additional infrastructure, integration and the reserve fund, a \$444 per acre-foot increase to the \$2,200 estimate, means a 20% increase in the cost of the water.

²⁵ TEXAS A&M INSTITUTE OF RENEWABLE NATURAL RESOURCES, ET AL., CITIES OF SAN ANTONIO AND FAIR OAKS WATER POLICY ANALYSIS 25, 46 (Nov. 2015) *available at* <http://irn.r.tamu.edu/media/605219/cosa-for-final-water-report.pdf>.

Wilcox Aquifer, and is the deeper part of the aquifer where the large production wells would be located for the Vista Ridge project.

The Carrizo-Wilcox Aquifer is named for its major formations, the Carrizo Aquifer and the underlying Wilcox formation, which contains the Calvert Bluff, Simsboro, and Hooper aquifers. The Vista Ridge project has permits that allow the annual pumping of approximately 36,000 acre-feet from nine wells in the Simsboro and another 15,000 acre-feet from nine wells in the Carrizo.

c. The history of the Vista Ridge project

In January 2011, SAWS issued the initial Request for Competitive Sealed Proposal (“RFCSP”) Regarding the Provision and Delivery of Alternative Water Supplies (Solicitation P-11-003-DS) seeking responses that could provide the City with 20,000 acre-feet/year, with the potential to increase by 1,500 acre-feet/year beginning in 2021.”²⁶

Abengoa’s July 2011 response offered 65,000 acre-feet/year, with the price of water varying from \$1,737 per acre-foot (if operated at full capacity of 65,000 acre-feet) to \$4,043 per acre-foot (if operated at 20,000 acre-feet in year 1).²⁷

In March 2013, SAWS issued Addendum #1, in which the utility modified its request to 50,000 acre-feet/year.²⁸ Again, Abengoa responded and offered water beyond 50,000 acre-feet/year. In addition, Abengoa proposed a new “North Side” delivery point north of Loop 1604 that would “provide SAWS with the ability to deliver potable water supplies to its northern portion service area, which continues to experience high population growth and is among the highest demand areas within the SAWS system.”²⁹ In addition to providing water to new, high-demand users, the North Side delivery point is conveniently located near the Highway 281 growth corridor.

In February 2014, the SAWS staff recommended rejecting all pipeline project proposals received in response to the RFCSP.³⁰ As noted at that time by SAWS Vice-President of Communications Greg Flores, rejecting the additional 50,000 acre-feet that Vista Ridge or another pipeline would have supplied was not a concern: “Because of

²⁶ Request for Competitive Sealed Proposal Regarding the Provision and Delivery of Alternative Water Supplies (Solicitation P-11-003-DS) (hereinafter SAWS RFCSP) 1 (January 14, 2011) *available at* www.NoVistaRidge.org (a steady increase over thirty years would *eventually* total 50,000 acre-feet in 2040, and 65,000 acre-feet in 2050).

²⁷ Vista Ridge Regional Supply Project, Abengoa’s proposal in response to SAWS RFCSP (hereinafter Vista Ridge RSP) 11, iv (July 2011) *available at* www.NoVistaRidge.org.

²⁸ RFCSP Addendum #1, 3 (March 8, 2013) *available at* www.NoVistaRidge.org.

²⁹ Vista Ridge RSP Addendum Response, 44 (June 2013) *available at* www.NoVistaRidge.org.

³⁰ See Greg Jefferson, *SAWS’ Water Deal Doomed by Texas History*, SAN ANTONIO EXPRESS-NEWS, MYSANANTONIO.COM (Feb. 8, 2014), http://www.mysanantonio.com/business/business_columnists/greg_jefferson/article/SAWS-water-deal-doomed-by-Texas-history-5215365.php.

successful water management, proactive planning, and additional water supplies being added, SAWS now has enough water supplies and management tools to last until 2027.”³¹ In other words, SAWS admitted at that time that Vista Ridge water was not needed before 2027.

When rejecting the pipeline proposals, the staff recommended instead incremental increases in the water supply by expanding SAWS’ program to desalinate local brackish groundwater obtained from southeast Bexar and adjoining counties. The staff’s report outlined that this “local brackish desal” water strategy would be coupled with a continued commitment to greater water efficiency, reuse, and other small-scale and more affordable water supply strategies.³²

“Because of successful water management, proactive planning, and additional water supplies being added, SAWS now has enough water supplies and management tools to last until 2027.”

- Greg Flores, SAWS Vice-President of Communications (explaining SAWS’ 2014 decision to reject all pipeline proposals)

In March 2014, in an abrupt change of events, the SAWS Board of Trustees deemed the Vista Ridge project responsive to its needs. A 500-page draft of a contract between the Vista Ridge Consortium and San Antonio/SAWS was released in July, and on September 29, 2014, the SAWS Board of Trustees voted to approve the contract, just one week after it was finalized.³³ On October 30, 2014, only one month later and despite repeated requests for more time for proper review from engaged community members, the City Council voted unanimously to approve the contract.³⁴ The contract was executed by SAWS on November 4, 2014.

This reversal by SAWS’ professional staff raised questions at the time, questions that still have not been answered. Robert Puente, SAWS President and CEO, insists that the contract is a result of negotiations in which San Antonio won favorable terms that did not appear in Abengoa’s initial proposal.³⁵

Although Mr. Puente has said repeatedly that the contract shifts all the risk to Abengoa and that there is no risk to San Antonio, his argument is not convincing. As

³¹ Rivard Report Staff, *Conversation: SAWS Abandons Pipes, Redirects Focus to Desalination Plant*, THE RIVARD REPORT (Feb. 7, 2014) <http://therivardreport.com/conversation-saws-abandons-pipes-redirects-focus-to-desalination-plant/>.

³² Chuck Ahrens, Vice-President, Water Resources & Conservation, SAWS, Presentation to SAWS Board Work Session about Water Supply Options (Feb. 10, 2014), available at www.NoVistaRidge.org.

³³ Draft Meeting minutes from SAWS Board of Trustees Meeting (Sept. 29, 2014) available at http://www.saws.org/who_we_are/board/agenda/documents/2015-01-06.AGN.pdf.

³⁴ Meeting minutes from San Antonio City Council A Session (Oct. 30, 2014) available at <http://www.sanantonio.gov/Portals/0/Files/Clerk/Minutes/2014/20141030Minutes.pdf>.

³⁵ Robert R. Puente, President-CEO, SAWS, Presentation to San Antonio City Council A Session (Oct. 30, 2014), available at www.NoVistaRidge.org (video available at http://sanantonio.granicus.com/MediaPlayer.php?view_id=2&clip_id=2701).

groundwater is depleted in the source aquifer, there is a very real risk that the water will not be available when San Antonio needs it most - after the first 30 years. (See sections three and four below for more information about sustainability and reliability.) While the financial risk may be assigned to Abengoa, it is San Antonio ratepayers who will pay for water they do not need. More importantly, all of the risk of not having the water in later decades falls squarely on San Antonio ratepayers and the “grandchildren” who are supposed to be protected by the Vista Ridge project. If water is not available when San Antonio needs it, ratepayers run the risk of having paid for water they didn’t need, and then not having the water they paid for when they actually do need it. In water supply planning terms, the Vista Ridge project is an “interruptible” supply, not a firm yield supply suitable for meeting municipal water demands.

2. Does San Antonio really need the Vista Ridge water? If not, who is the water for?

SAWS’ own projections show that under normal rainfall conditions, the City will not need any additional water for many decades.³⁶ Even still, the Vista Ridge project will increase the City’s water supply by about 20%.³⁷

In addition to Vista Ridge, SAWS is also planning to implement three other new water supply projects, including its brackish desalination project, which together will add about 60,000 acre-feet of firm water by 2026.³⁸

SAWS admits that Vista Ridge water is to avoid Stage III and IV drought restrictions while providing for new development.³⁹ To provide for and to attract new development, SAWS branded San Antonio as “Water City”⁴⁰ with visions of “abundant” – not just adequate – water during a drought of record.⁴¹ In other words, SAWS is not just preparing the city to survive a drought of record, nor are they assuring abundant water during normal conditions - SAWS wants Vista Ridge water to provide for *abundant water during a drought of record*. In short, Vista Ridge is for keeping St. Augustine lawns green even during times of drought – a luxury that directly contradicts community goals of affordability, conservation, and climate protection.

³⁶ SAWS, 2012 WATER MANAGEMENT PLAN, *available at*

http://www.saws.org/Your_Water/WaterResources/2012_wmp/docs/20121204_2012WMP_BoardApproved.pdf.

³⁷ SAWS WATER MANAGEMENT PLAN SEMIANNUAL REPORT 3 (July-Dec. 2014) *available at*

http://www.saws.org/Your_Water/WaterResources/2012_WMP/docs/WaterMgmtSemiannualReport_July-December%202014_final.pdf (In 2014, SAWS had a total potable production of 237,395 acre-feet.).

³⁸ *Id.* at 4 (“Implementation of SAWS four planned water supplies [Brackish Groundwater Desalination Program, Expanded Bexar County Carrizo Aquifer, acquisition of additional Edwards Aquifer Water Rights and the Vista Ridge Project] will add up to an additional 110,937 acre-feet of firm water supply by the year 2026.”).

³⁹ SAWS, VISTA RIDGE PIPELINE – FREQUENTLY ASKED QUESTIONS

http://www.saws.org/your_water/waterresources/projects/vistaridge/FAQ.cfm (last visited Nov. 17, 2015).

⁴⁰ See WATER CITY SA, <http://www.watercitysa.com/>.

⁴¹ Robert R. Puente, President-CEO, SAWS, Presentation to SAWS Board of Trustees (Sept. 22, 2014), *available at*

www.saws.org/your_water/waterresources/projects/vistaridge/docs/20140922_SAWSBoardBriefing_VistaRidgeContract.pdf.

Amy Hardberger, a professor at St. Mary's School of Law, uses a power plant analogy to explain why using the Vista Ridge project to meet drought needs is a bad financial decision. She said: "[T]he city is building a base load power plant – one that will work 365 days a year – in order to meet limited peak needs in summer. This makes no financial sense. If you are going to build something to manage high demands over limited periods of time, you should build something that can be turned on and off and only provides resources to cover the peak needs, not provide excess water for years."⁴²

In a February 20, 2014 presentation, SAWS Chief Financial Officer Doug Evanson explained that "[t]o economically justify the acquisition of new supplies for the sole purpose of 'eliminating' drought restrictions, the marginal cost of these supplies needs to be ~\$1,000 per [acre-foot]."⁴³ Evanson suggested that rather than spend more than \$1,000 per acre-foot, "[i]ncremental storage used as a peak source of supply could provide significant value in times of drought."⁴⁴ Current projections for Vista Ridge estimate the water will cost at least \$2,200 per acre-foot, well beyond the \$1,000 per acre-foot threshold for drought management alone recommended by SAWS' very own CFO.

Clearly, the motivation to sign the Vista Ridge contract was not only to keep San Antonio out of certain drought restrictions, or to keep pace with the city's growth. It is more likely that this water was originally intended to attract developers and provide for new development both inside and outside of San Antonio. The concept of "regional supply" is also pushed hard in the Vista Ridge proposal. At its core, Vista Ridge is not a San Antonio project but a regional project with regional effects and regional implications.

"To economically justify the acquisition of new supplies for the sole purpose of 'eliminating' drought restrictions, the marginal cost of these supplies needs to be ~\$1,000 per [acre-foot]."

- Doug Evanson, SAWS CFO

SAWS officials admit that since San Antonio does not need all of the water, they plan to sell portions of it to others along the 142-mile pipeline corridor.⁴⁵ As such, it represents a fundamental shift by SAWS from that of a local water provider to a

⁴² Amy Hardberger, *Vista Ridge Project Creates More Questions than Answers*, TEXAS LIVING WATERS PROJECT (Oct. 6, 2014) <http://texaslivingwaters.org/vista-ridge-project-creates-questions-answers/>.

⁴³ Doug Evanson, Senior Vice-President/CFO, SAWS, Presentation to SAWS Board of Trustees about Valuation of Water Resources and Drought Restrictions (Feb. 20, 2014) *available at* www.NoVistaRidge.org.

⁴⁴ *Id.*

⁴⁵ Robert R. Puente, President-CEO, SAWS, Presentation to SAWS Board of Trustees (Sept. 22, 2014), *available at* www.saws.org/your_water/waterresources/projects/vistaridge/docs/20140922_SAWSBoardBriefing_VistaRidgeContract.pdf.

regional water speculator and broker, committed to serving its private partners as much as its own ratepayers.

This regional shift came about when SAWS upped its request for new water supply proposals from 20,000 acre-feet/year to 50,000 acre-feet/year. This more than doubling was driven not by a doubling of San Antonio's projected future water needs, but rather by the economics of financing a long-distance pipeline project and a *sub rosa* decision by SAWS to become a regional water dealer, using San Antonio ratepayers to bankroll its new position as a regional water broker.

With Vista Ridge water, SAWS will become a regional water broker.

The new delivery point northwest of the Loop 1604/US 281 North interchange and the new pipeline route extending more than 19 miles over the Edwards Aquifer recharge zone further points to "excess" Vista Ridge water being procured for sale to new development in northern Bexar, western Comal, western Hays, and even Blanco counties – all of these areas over the Edwards Aquifer recharge and contributing zones.

Since the Vista Ridge project is a regional project, the region should not have been left out of the decision-making process. Communities, property owners, and others who will be affected by the project have been kept in the dark, the harms and risks they will suffer excluded from the equation. This approach does not match SAWS claims of transparency and being good neighbors

3. Is the Vista Ridge project sustainable?

While it is true that the Carrizo-Wilcox Aquifer, and especially its Simsboro formation, are very prolific, not all hydrology experts agree that the aquifers will allow the massive amounts of pumping as represented by Abengoa and SAWS. Furthermore, these aquifers are fundamentally different from the Edwards Aquifer, recharging much more slowly. As explained in more detail below, groundwater levels in portions of these aquifers near the proposed well fields are already declining – and Vista Ridge pumping has not even begun.

SAWS insists that the Post Oak Savannah Groundwater Conservation District ("POSGCD") is charged with protecting the groundwater in Burleson and Milam counties, and should the pumping prove harmful to the aquifer, POSGCD would take appropriate steps.⁴⁶ However, the effectiveness of POSGCD's rules and monitoring have been questioned, since it has not yet denied a request for a production permit, and

⁴⁶ Kiah Collier, *San Antonio Water Utility Leader Defends Vista Ridge*, THE TEXAS TRIBUNE (Oct. 22, 2015), <http://www.texastribune.org/2015/10/22/san-antonio-water-utility-leader-defends-vista-rid/>.

despite evidence that aquifer levels are declining beyond threshold levels, has taken no action.

In 2015, Dr. Curtis Chubb, a Milam County landowner and longtime water activist and journalist, filed a petition for inquiry with the Texas Commission on Environmental Quality (“TCEQ”) to challenge POSGCD’s rules.⁴⁷ POSGCD allows for two acre-feet of pumping rights per acre of land owned.⁴⁸

POSGCD has currently permitted the pumping of over 100,000 acre-feet of water per year from the Simsboro Aquifer and almost 20,000 acre-feet of water per year from the Carrizo Aquifer.⁴⁹ These production permits exceed MAG-2020 (“modeled available groundwater” in 2020) by 169% and 294%, respectively, as shown in Figure 2 below.⁵⁰

Each groundwater conservation district must have rules designed to achieve the “desired future conditions” (“DFCs”) established and agreed upon by their groundwater management area. The Texas Water Development Board (“TWDB”) used the DFCs to determine the modeled available groundwater (“MAG”) for the aquifers in each groundwater district. MAG is defined as “the amount of water that the [TWDB] executive administrator determines may be produced on an average annual basis to achieve a desired future condition.”⁵¹

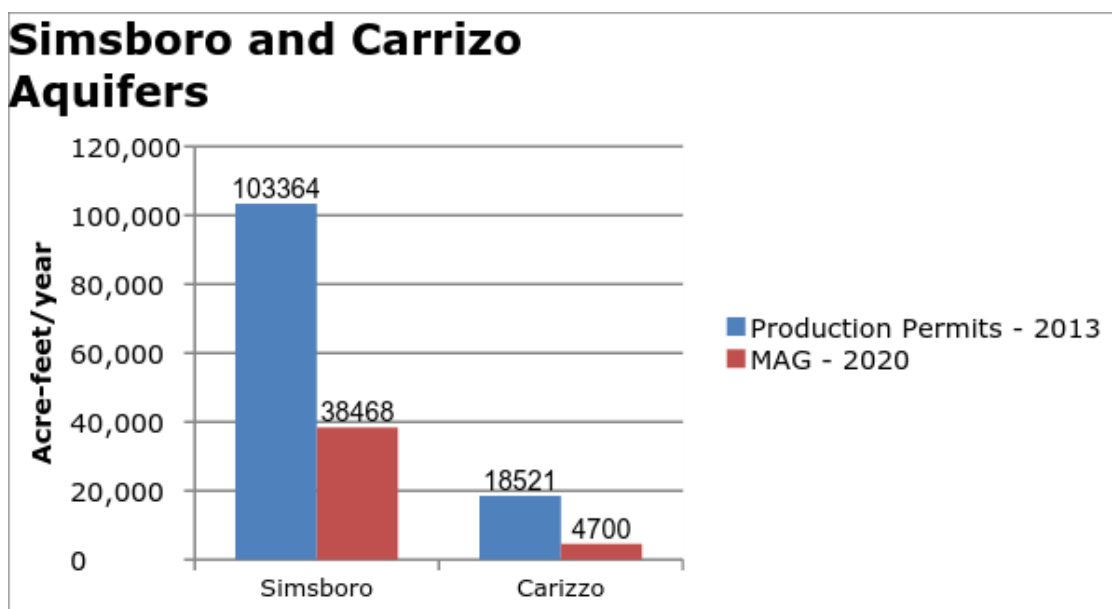


Figure 2: Comparison of Production Permits and MAG for the Simsboro and Carrizo Aquifers within the POSGCD.

⁴⁷ See Curtis Chubb, PETITION FOR INQUIRY (June 4, 2015) available at www.NoVistaRidge.org.

⁴⁸ Post Oak Savannah Groundwater Conservation District, District Rule § 5.1(2), available at <http://www.posgcd.org/district-information/district-rules/> (amended April 8, 2008).

⁴⁹ Chubb, PETITION FOR INQUIRY at 5.

⁵⁰ *Id.*

⁵¹ TEX. WATER CODE § 36.001.

POSGCD insists that much less than the permitted amount is actually being withdrawn, and should additional pumping cause threshold levels to be triggered, the District can cut back usage to deal with any problems.⁵² However, the District's rules generally allow cut backs of up to only 2% per year,⁵³ which is not enough to impact Vista Ridge pumping. Abengoa has already assured SAWS that if BlueWater gets cut back, they will simply call on additional pumping rights not currently used or calculated into their 50,000 acre-feet. BlueWater holds approximately 25,000 additional acres of land under lease to give them an additional 50,000 acre-feet of water.⁵⁴ Any cutbacks by the District would not actually have the effect of cutting back pumping by Abengoa for many years.

Abengoa outlined its strategy in a footnote of its 2011 Vista Ridge proposal: "POSGCD rules allow a maximum reduction in the allocation of no more than two percent per year. . . . POSGCD allow water rights holders to apply for permits at any time, even during times of allocation reduction. Therefore, were a reduction to be imposed, the Vista Ridge Consortium would apply for additional production permits using a portion of their excess groundwater lease holdings."⁵⁵ While this may help in the short run, the mining of the aquifer will further lower water wells, triggering a need to revise the rules to prevent further drawdowns.

To make matters worse, there is evidence that some monitoring wells in the district have already hit threshold levels, and that POSGCD has not taken any action nor alerted the public. In the course of preparing for his petition for inquiry, Dr. Chubb found that six monitoring wells in the Simsboro shallow management zone have hit threshold levels.⁵⁶ (See Figure 3.) This means that drawdown to the aquifer in those places occurred at a percentage that POSGCD determined should cause them to take action. Between the six wells, drawdown averaged 20 feet, which is 100% of the threshold value in 2059.⁵⁷ Despite Dr. Chubb raising these concerns, the District has not acted. It is unclear as to whether the District is evading action or simply not monitoring the data from these wells. In fact, at its September 8, 2015 board meeting, in answer to a question from one of the directors, POSGCD's general manager and hydrology

⁵² Nathan Ausley, President of POSGCD Board of Directors, addressing a group of landowners in Burleson County (Aug. 8, 2015).

⁵³ POSGCD, District Rule § 16.7(3) *available at* <http://www.posgcd.org/district-information/district-rules/> (amended June 12, 2012) ("The volume of water authorized by permit to be produced in a Management Zone may be reduced by up to two percent per year with the reduction beginning twelve months after a decision by the Board that such reduction is reasonably required for the conservation and preservation of groundwater, or the protection of the aquifer or groundwater users, within the Management Zone; and [Amended June 12, 2012]).

⁵⁴ WIPA, Reference Document 3, Groundwater Lease Conveyance Agreement, 1 (Nov. 4, 2014) *available at* http://www.saws.org/your_water/waterresources/projects/vistaridge/docs/201502_SAWS_VistaRidge_WaterTransmissionAndPurchaseAgreement_FINAL.pdf.

⁵⁵ Vista Ridge RSP at 30 n. 4, *available at* www.NoVistaRidge.org.

⁵⁶ Curtis Chubb, PETITION FOR INQUIRY, PETITIONER'S REPLY BRIEF 15 (Aug. 6, 2015), *available at* www.NoVistaRidge.org.

⁵⁷ POSGCD, MANAGEMENT PLAN 7 (2012), *available at* <http://www.posgcd.org/district-information/district-management-plan-2/>.

consultant admitted that they “do not know” if the thresholds identified in Dr. Chubb’s petition as having been triggered, have in fact been triggered.⁵⁸

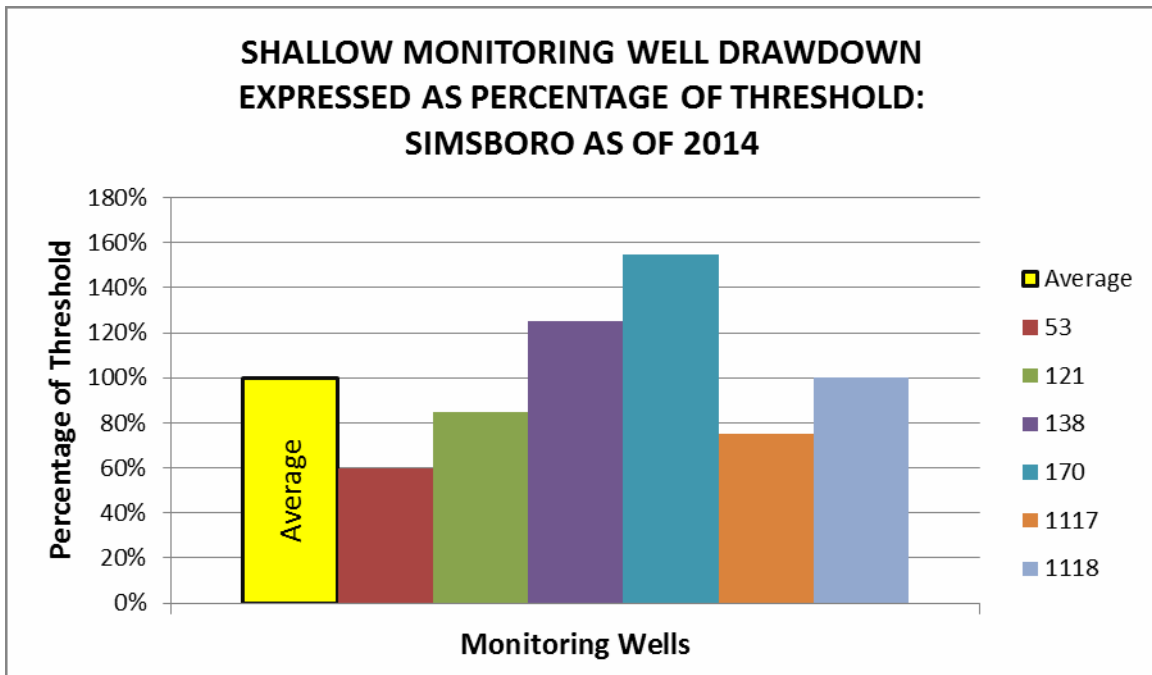


Figure 3: The drawdowns of six monitoring wells in the Simsboro shallow management zone expressed as a percentage of the threshold value, which is 20 feet in the year 2059.

So while supporters boast that Vista Ridge will provide "water for our grandchildren," the truth is the Carrizo and Simsboro aquifers are already being over pumped and the Vista Ridge project hasn't even begun.

Respected groundwater hydrologist and former Edwards Aquifer Authority board member, George Rice used the State’s Groundwater Availability Model (“GAM”) to predict just what the impacts of Vista Ridge pumping could be on the aquifer levels. The model predicts that in 2060 the Vista Ridge pumping will cause 400 feet of drawdown one mile out from the well field, and 300 feet of drawdown at an approximate five-mile distance from the well field.⁵⁹ This drawdown would violate the currently established regulatory limits, known as “desired future conditions” or DFCs. Pumping cutbacks would be required.

The map below (Figure 4) shows the predicted drawdown due only to Vista Ridge relative to the well field site. Importantly, this drawdown does not take into account

⁵⁸ POSGCD Board of Directors Meeting (Sept. 9, 2015) available at www.posgcd.org/administrator/archived-minutes/archived-minutes-2015/ (minutes are not posted at the time this paper was published but are anticipated).

⁵⁹ GEORGE RICE, EFFECTS OF VISTA RIDGE PUMPING ON GROUNDWATER AND SURFACE WATER IN THE LOST PINES AND POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICTS 3 (2015), available at www.NoVistaRidge.org.

baseline pumping or potential pumping from other mega-permits currently in the works.

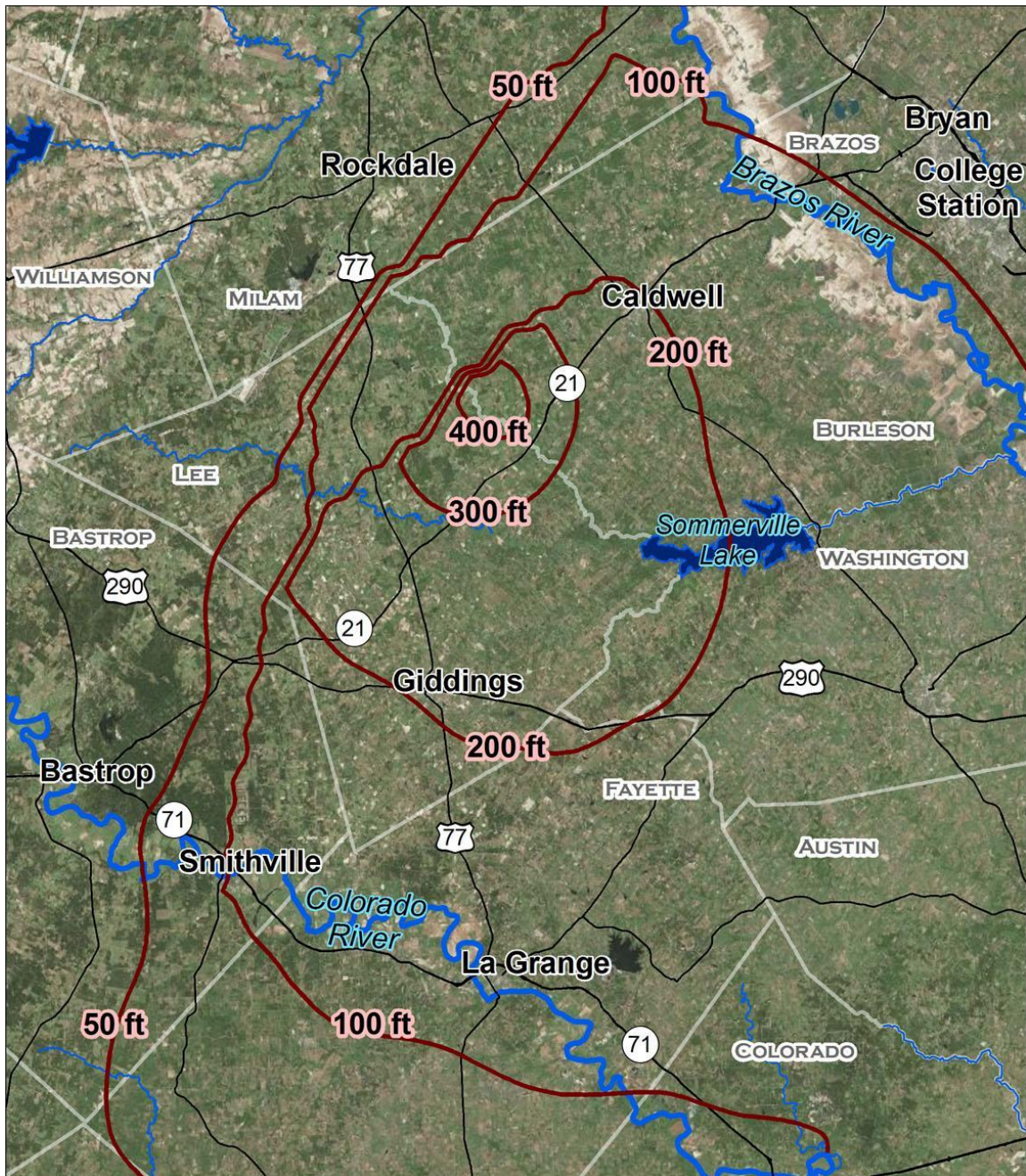


Figure 4: GAM Prediction of drawdowns in the Simsboro Aquifer due to Vista Ridge pumping, 2060.

Two other large proposed production permits also threaten to take water from the Carrizo-Wilcox Aquifer. Forestar currently is permitted to pump 12,000 acre-feet/year from the Simsboro Aquifer in Lee County but is seeking a total of 45,000 acre-feet/year. End Op is seeking permits to pump 46,000 acre-feet/year of Simsboro groundwater

from Bastrop and Lee counties (Bastrop and Lee counties are within the boundaries of the Lost Pines Groundwater Conservation District). In stark contrast to the “permit everything” approach by POSGCD, the Lost Pines GCD, which has a common boundary with POSGCD, is conservative in its permitting and is attempting to defend its groundwater against over pumping. Unfortunately, the Vista Ridge project could undo Lost Pines GCD’s hard work because its pumping will also remove water from the Carrizo and Simsboro aquifers within the Lost Pines GCD’s boundaries.

The best available science tells us that the proposed pumping, standing alone and together with other proposed projects, will pump vastly more water than recharges the source aquifers, which means that the Vista Ridge project is not pumping the aquifers in a sustainable manner. The Golden Rule tells us we should not be pumping our neighbors’ wells and springs dry in order to provide abundant water for us.

4. Is the water secure and reliable?

In addition to limited recharge, declining water levels, and excessive pumping, legal and regulatory uncertainties compound these physical constraints for the Vista Ridge project. In Texas, groundwater in place is the property of the landowner, but groundwater conservation districts are the preferred method of regulation. The regulatory authority of a groundwater district is virtually the only constraint on the “Rule of Capture” in Texas. POSGCD has regulatory authority over the Vista Ridge project even though a good portion of the water pumped will come from neighboring Lee and Bastrop counties.⁶⁰ Although the POSGCD has authorized the Vista Ridge project to withdraw more than 70,000 acre-feet from the aquifers, there are several questions regarding the reliability of this pumping allowance.

For one, though Lost Pines GCD has worked with POSGCD and the other groundwater conservation districts in Groundwater Management Area 12 (“GMA-12”), and thus far agrees with to the DFCs, that cooperative relationship could change if the over-pumping in POSGCD impacts the DFCs in Lost Pines GCD. Lost Pines GCD may be pushed into a position where they will, out of necessity, have to appeal or challenge the DFCs. This is a political and regulatory uncertainty that could impact Vista Ridge.

Furthermore, the timing of the various leases issued by POSGCD does not add up. If the pipeline starts producing water in 2020, the 30-year contract term will expire in 2050. Abengoa Vista Ridge’s 40-year production permit will expire on September 11, 2044, while its 30-year transport permit, which allows the Vista Ridge pipeline to

⁶⁰ See Bob Kier, ANALYSIS OF PROPOSED AQUA WATER SUPPLY DRILLING PERMITS USING THE QUEEN CITY/SPARTA GAM (2008) available at www.NoVistaRidge.org (presented to Lost Pines GCD Board of Directors meeting on Sept. 7, 2008).

convey the water out of Burleson County, will expire on September 15, 2034.⁶¹ In September 2014, prior to the assignment of the permit to Abengoa Vista Ridge, BlueWater’s application to extend the transport permit was denied by the POSGCD Board of Directors.⁶² The mismatched timing of the contract, the production permit, and the transport permit raises a question as to whether this will prevent the project team from successfully obtaining low-interest financing.

Figure 5 displays the acre-feet/year of Simsboro groundwater permitted by POSGCD, calculated as the MAG, as well as recharge. POSGCD’s MAGs for the Simsboro and Carrizo aquifers will be exceeded the day Vista Ridge begins pumping.⁶³ POSGCD’s permitting policy does not consider the MAG; instead POSGCD relies on monitoring wells to warn them when the aquifer levels near the DFCs. Although POSGCD has assured its constituency that when water levels reach within 5% of the DFCs, it will cut back the permitted amount (not the actual pumping amounts), its rules only allow for limited reductions while also allowing for new pumping permits to be issued even while POSGCD is reducing the existing pumping permits. It is unclear how POSGCD’s rules will either achieve the DFCs under these conditions or ensure the reliability of the Vista Ridge project’s groundwater. POSGCD may be forced to update its rules, and again, it’s unclear what those changes would look like.

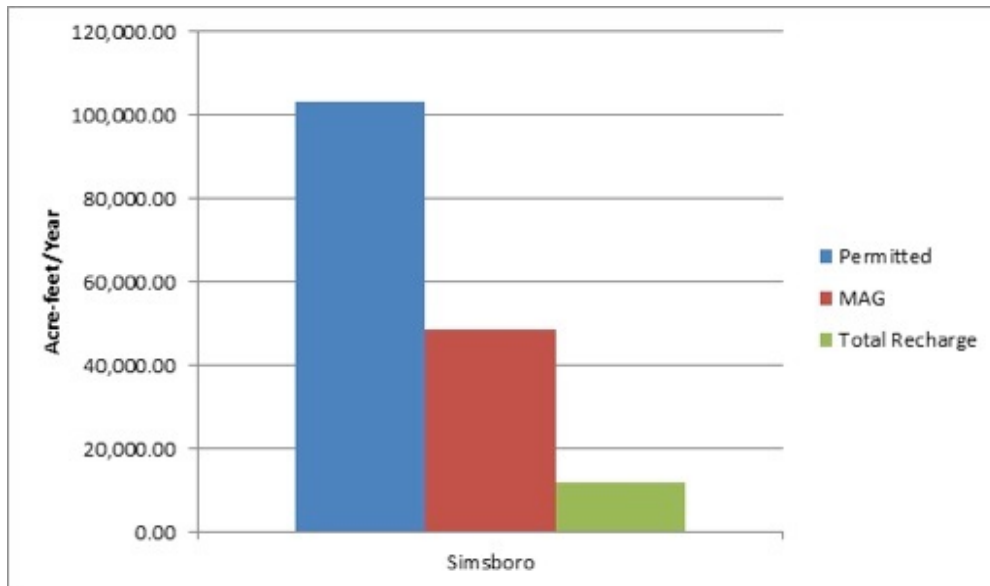


Figure 5: Permitted acre-feet compared to Modeled Available Groundwater and actual total recharge in the Simsboro Aquifer.

⁶¹ Copies of these permits are available at www.NoVistaRidge.org.

⁶² Meeting minutes from POSGCD Board of Directors (Sept. 9, 2014) available at http://www.posgcd.org/wp-content/uploads/2015/02/09.09.2014_Minutes.pdf.

⁶³ Curtis Chubb, *San Antonio Wants Too Much of Our Groundwater*, THE RIVARD REPORT (Aug. 31, 2014), <http://www.therivardreport.com/san-antonio-wants-too-much-of-groundwater/>.

Finally, because local communities in the exporting areas did not consent to the Vista Ridge project, political and regulatory risks will likely increase as well. As wells drop and springs dry up, both regulatory and political backlash, or water wars, will likely ensue.

SAWS own statements and structuring of the Vista Ridge deal confirm the lack of certainty in delivering the water.

Although SAWS touts the Vista Ridge contract as shifting the financial risk to Abengoa, SAWS doesn't emphasize that the "risk-free" contract requires a stiff premium that will be paid by San Antonio ratepayers.

What this financial premium tells us is that the project itself is quite risky. Abengoa may have assumed the financial risk in return for a big payoff, but it is San Antonio that must assume the risk of not receiving the water. The purported goal of the project is to provide secure water. Yet, the water promised is not secure or reliable.

San Antonio will bear 100 percent of the risk that the water will not be there when it is needed the most – after the thirty-year contract is completed and the infrastructure is signed over to SAWS. This risky project is contrary to established water planning principles that municipal water providers provide secure, "firm yield" water.

San Antonio bears the risk that the water will not be there when it is needed the most – after the thirty-year contract is complete.

5. Is Vista Ridge water affordable and is the cost of the water equitably allocated?

As contracted, the Vista Ridge project is neither affordable nor equitable, and cost estimates are still rising. Initially SAWS estimated that Vista Ridge would lead to a 16% rate increase for ratepayers. That figure has now risen to a predicted 19% increase on the average ratepayer's bill from 2015 to 2020 due solely to Vista Ridge.⁶⁴

The Vista Ridge rate increase comes at a time when SAWS rates will be increasing to help pay for other major projects, including other new water supplies, an EPA consent decree to repair an aging sewer system, and the integration of BexarMet (a previously-existing water utility in Bexar County that was dissolved and whose customers were

⁶⁴ See Doug Evanson, Sr. Vice-President/CFO, SAWS, Presentation to SAWS Board of Trustees about 2016 Budget and 2017-2020 Rate Outlook 42 (Oct. 6, 2015) available at www.NoVistaRidge.org (The increase from 2015 bill of \$54.34 by the \$10.29 devoted to Vista Ridge in 2020, constitutes a 19% increase.).

assumed by SAWS). Overall, SAWS ratepayers can expect a total increase of 50% on the average bill over the next five years.⁶⁵ With the median household income in San Antonio at approximately \$42,722 a year and almost 20% of the population living below the poverty level,⁶⁶ a 50% rate increase will greatly affect the bottom line of tens of thousands of local households.

	2015	Proposed		Proposed/Projected		
		2016	2017	2018	2019	2020
Water Supply	9.82	10.73	12.49	13.30	16.15	23.00
Water Delivery	16.51	18.15	19.56	20.60	21.20	22.02
Wastewater	25.42	26.77	27.97	29.82	31.93	33.76
Total SAWS	\$51.75	\$55.65	\$60.02	\$63.72	\$69.28	\$78.78
Increase \$		\$3.90	\$4.37	\$3.70	\$5.56	\$9.50
Increase %		7.5%	7.9%	6.2%	8.7%	13.7%
EAA Fee						
EAA Fee	2.35	2.71	2.71	2.71	2.71	2.71
TCEQ Fee						
TCEQ Fee	0.24	0.24	0.24	0.24	0.24	0.24
Total with Fees	\$54.34	\$58.60	\$62.97	\$66.67	\$72.23	\$81.73
Increase % with Fees		7.8%	7.5%	5.9%	8.3%	13.2%

•Assumes water usage = 7,092 gallons & wastewater usage = 5,668 gallons, ICL, Restructured rates

Figure 6: Projected average monthly residential bill. Includes Vista Ridge and assumes 2017 District Special Project (BexarMet) Rate Integration. Source: San Antonio Water System

Although SAWS likes to emphasize that their average residential rates will remain lower than other major cities in Texas, they cannot explain the lack of equity in how these rates are distributed. Vista Ridge water would be provided for new growth, but SAWS current ratepayers will pay for the project in its entirety. Because Abengoa Vista Ridge, not the City of San Antonio, will be paying the capital costs, the City cannot charge impact fees to new development.⁶⁷ At the public meetings on SAWS 2012 Water Management Plan held on September 26 & 27, 2012, SAWS ratepayers repeatedly said that they did not want their water rates increased to pay for new development on the north side.

Additionally, residential bills in 2020 will reflect the cost of the full 50,000 acre-feet of Vista Ridge project water, instead of increasing the supply gradually based on need. The Vista Ridge project would have been more equitable had it initially delivered the

⁶⁵ See *id.* at 41 available at www.NoVistaRidge.org (The increase in the “Total with Fees” average monthly residential bill from \$54.34 in 2015 to \$81.73 in 2020 is approximately 50.4% total. Simply adding the annual percentage increases (7.8%, 7.5%, 5.9%, 8.3%, 13.2%) does not account for the interest compounding.).

⁶⁶ United States Census Bureau, State & County QuickFacts, <http://quickfacts.census.gov/qfd/states/48/4865000.html> (figures were for 2009-2013).

⁶⁷ Meredith McGuire, *Commentary: Who is Really Paying for SAWS Rate Structure?*, THE RIVARD REPORT (Aug. 25, 2015), <http://therivardreport.com/commentary-who-is-really-paying-for-saws-rate-structure/>.

water that current users need and if it then ramped up quantity as needed; this approach would have spread the costs across existing ratepayers and new ratepayers as they were added to SAWS' service area. Instead, the City of San Antonio is committing its current ratepayers to a huge financial obligation to pay for 50,000 acre-feet/year of water, even though it may never be used, except in a drought of record or for development in the future.

Finally, there is a concern that the dramatic increase in rates will drive demand for water down even further, resulting in less revenue for SAWS and even more excess water. If the water use declines more than expected, SAWS will either have to raise rates further or sell more of the water to other customers – customers who thus far have failed to materialize. This further begs the question: Is Vista Ridge a smart investment?

6. Will the Vista Ridge project help or hurt efforts to protect the Edwards Aquifer?

All agree that San Antonio needs to diversify its water supply so that it is not so reliant on the Edwards Aquifer. However, the Edwards Aquifer will remain the primary source of water for the City and the entire region, and contrary to SAWS representations, the Vista Ridge project poses a major threat to the Edwards. The project plans are to route 19 miles of the water pipeline on top of the Edwards recharge zone (see Figure 7), which threatens to unleash a development boom over the sensitive recharge and upstream contributing zones.

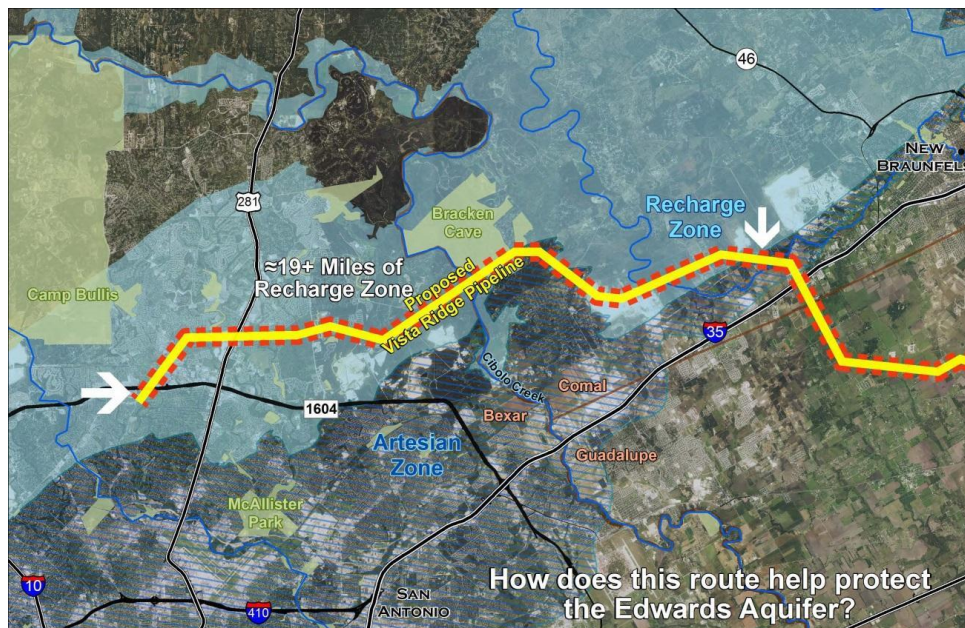


Figure 7: The planned route of the Vista Ridge pipeline would traverse approximately 19 miles over the Edwards Aquifer recharge zone.

As shown in Figure 8, the original pipeline route avoided the Edwards Aquifer recharge zone, but SAWS and Abengoa rerouted the pipeline to the “North Side” delivery point. In addition to the direct threat construction of the pipeline poses, the new delivery point, near Highway 281, opens up a vast swath of undeveloped Edwards Aquifer watershed lands in northern Bexar and Comal counties to new development. While SAWS promised the City Council that the Vista Ridge project would help protect the Edwards Aquifer, it is positioned to do the opposite.

A network of existing and proposed pipelines are planned to bring water into the rapidly developing Highway 281 growth corridor. It is clear that SAWS relocated the project in order to sell its unneeded Vista Ridge project water – water that will feed large scale sprawl development in unregulated areas over the aquifer and well beyond SAWS' own service area.

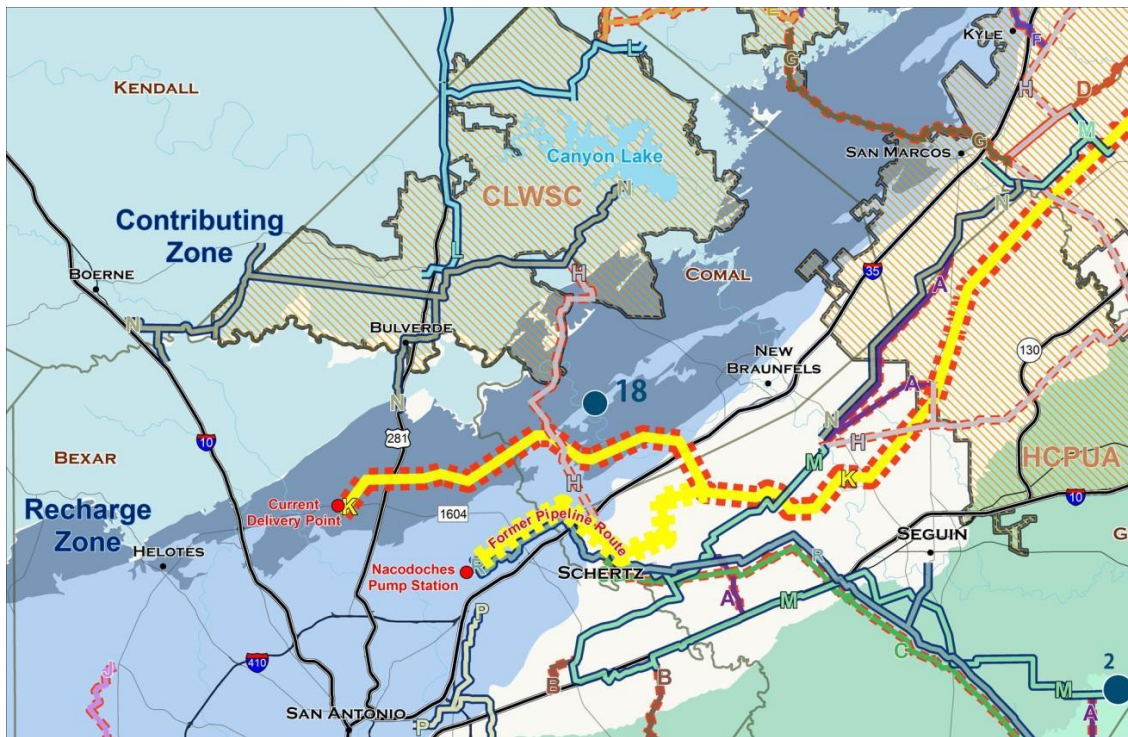


Figure 8: The original delivery point was proposed at Nacogdoches Pump Station. The delivery point was changed after SAWS amended its proposal from 20,000 acre-feet to 50,000 acre-feet.

Even if SAWS wants to protect the Edwards Aquifer, its current plan for the Vista Ridge project would put the water utility in a difficult position to follow through on that promise. SAWS plans to offset the high costs of the Vista Ridge project by selling water the City does not immediately need. Mr. Puente admits that there is no one willing to sign a deal for Vista Ridge water until the project is financed and the contract

is finalized.⁶⁸ But at that point, San Antonio will have committed to 50,000 acre-feet/year that the utility must pay for. SAWS will have lost its leverage with potential water purchasers. Recovering some of its costs by selling Vista Ridge water at below-cost rates would be better than recovering none of them. This desire to offset costs by selling to Hill Country development interests will likely trump SAWS purported commitment to protecting the Edwards Aquifer from development and pollution.

7. Will (or has) pursuit of the Vista Ridge project undermine(d) San Antonio's commitment to conservation?

If Vista Ridge goes forward, SAWS' commitment to conservation will also fade. Dr. Calvin Finch served as the Water Conservation Director, Water Resources Director, and Director of Special Programs and Regional Initiatives during his 12 years at SAWS. Dr. Finch recently authored the draft of San Antonio's 2015 Water Policy Report, where, among points, he questioned SAWS commitment to conservation.⁶⁹ He pointed out that in San Antonio's most recent water management plan, the City's conservation measures seem to cease in 2020, the same time Vista Ridge comes on line.⁷⁰ Although Dr. Finch has asked SAWS to directly address this concern by putting something in writing that commits the City to conservation measures after 2020, this commitment has not happened.

According to Dr. Finch, SAWS' demand-management goals were weakened from 126 gallons per capita per day (GPCD) in the 2009 Water Management Plan to 135 GPCD in the 2012 Water Plan. Per-capita water use in 2012, 2013, and 2014 (estimated) were 128, 126, and 126, respectively. The following figure (Figure 9) that Dr. Finch included in his draft report clearly shows a trend line, with the red squares denoting the 11 driest years. The black trend line, which represents the GPCD average yearly reduction, is decreasing at approximately 2.25 GPCD per year.⁷¹

⁶⁸ Kiah Collier, *San Antonio Water Utility Leader Defends Vista Ridge*, THE TEXAS TRIBUNE (Oct. 22, 2015), <http://www.texastribune.org/2015/10/22/san-antonio-water-utility-leader-defends-vista-rid/>.

⁶⁹ Dr. Finch was replaced before the final report was presented to the City Council.

⁷⁰ Kiah Collier, *San Antonio Water Utility Leader Defends Vista Ridge*, THE TEXAS TRIBUNE (Oct. 22, 2015), <http://www.texastribune.org/2015/10/22/san-antonio-water-utility-leader-defends-vista-rid/>.

⁷¹ CALVIN FINCH, ET AL., DRAFT CITIES OF SAN ANTONIO AND FAIR OAKS RANCH WATER POLICY ANALYSES 100-01 (July 2015) available at <https://www.sanantonio.gov/Portals/0/Files/Mayor/COSA-FairOaksRanchWaterPolicyAnalyses.pdf>.

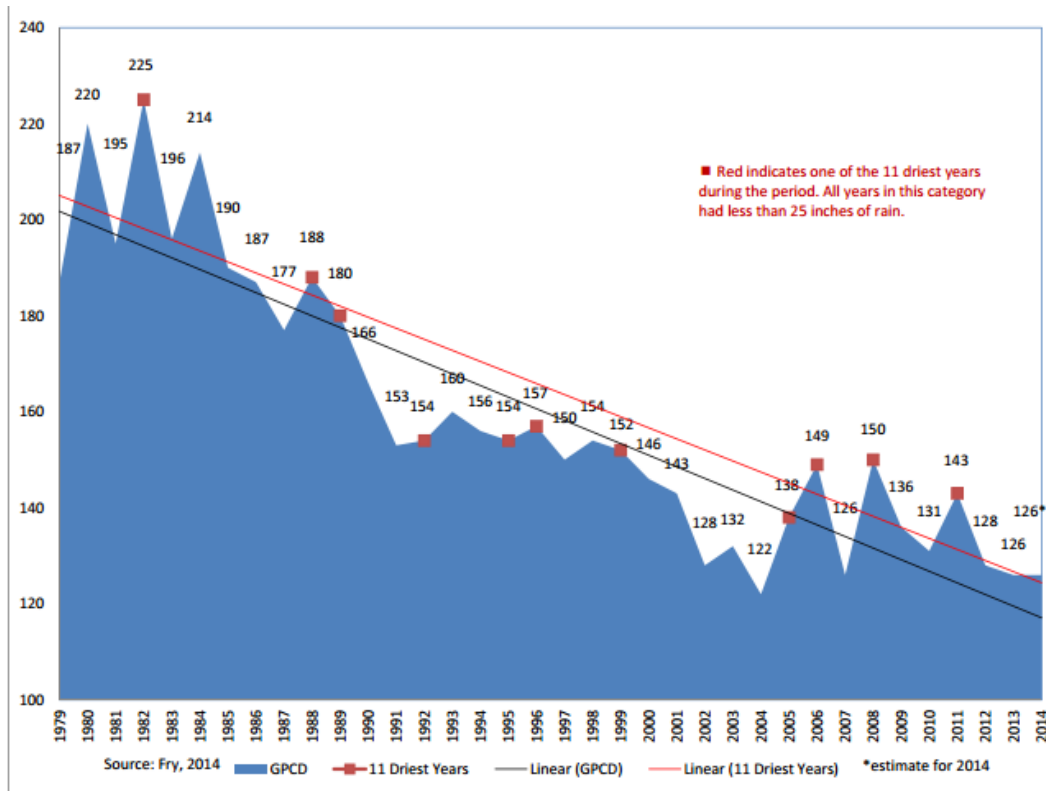


Figure 9: Per capita water use (SAWS 1979-2011, SAWS + DSP 2011-2014).
 Source: Finch, et al., DRAFT Water Policy Analyses, July 2015.

Prior to Vista Ridge, SAWS’ policy on water supply expansion was to acquire new supply “just in time” to meet its City’s needs. This policy was supported, among others, by a nationally-recognized approach to water conservation. The proposed phase-in of additional brackish water desalination capacity was consistent with this policy. With the Vista Ridge project to supply extremely large volumes of water in excess of San Antonio’s needs, both SAWS and City Council have begun to speak of an “abundant water” policy. This rightfully raises questions about SAWS’ commitment to conservation versus evermore voracious consumption of water resources as a response to growth projections.

8. What are alternatives to the Vista Ridge project?

All agree that San Antonio must diversify its water sources. Likewise, all agree that conservation alone is not enough to meet the growing needs of San Antonio. Even still, alternatives to Vista Ridge exist – alternatives that make more economic, environmental, and long-term sense for the residents of San Antonio as well as surrounding communities. These alternative approaches include, however, a continued

commitment to the most affordable and reliable source of new water: the water that is saved and not needed.

The best alternatives take into account the ability to ramp up or phase in the volume of water over time based on need. The best alternatives allow the cheapest sources of water to be used first. The best alternatives also consider the science and respect the needs of the communities existing over the source aquifers. They are local in nature, not requiring massive debt-financed infrastructure to move large amounts of water long distances.

The alternatives to Vista Ridge include some combination of the following strategies:

- (a) Expanding SAWS' brackish desalination project** has the advantage of cost and flexibility, while still providing a substantial amount of water. SAWS is already committed to building the brackish desalination plant. Expanding this operation was the original recommended water supply, in place of Vista Ridge, largely because the water can be phased-in based on need. Additionally, it is brackish water, not freshwater like that proposed with Vista Ridge.
- (b) Water savings from repairs to the existing system should be treated as a "new source"** of water for the City. SAWS experienced 36,000 acre-feet of lost water or "non-revenue water" in 2013.⁷² This means 36,000 acre-feet was unaccounted for and could have been lost to leaks, theft, or meter inaccuracies. SAWS' lost water has been rising since 2004.
- (c) Continued conservation efforts can provide real water savings.** Although conservation will not provide all the water San Antonio will need, the importance of a continued emphasis on conservation should not be discounted. SAWS customers have the potential to reduce per capita use from 138 gallons per day. For example, Australian households use an average of 54 GPCD for both indoor and outdoor use.⁷³
- (d) SAWS should also implement a long-term plan that accounts for decentralizing water supply strategies,** such as re-use, rainwater harvesting, and other small-scale measures. Although challenging, a forward-thinking

⁷² TEXAS A&M INSTITUTE OF RENEWABLE NATURAL RESOURCES, ET AL., CITIES OF SAN ANTONIO AND FAIR OAKS WATER POLICY ANALYSIS 71-72 (Nov. 2015) available at <http://irnr.tamu.edu/media/605219/cosa-for-final-water-report.pdf>.

⁷³ Matthew Heberger, *New Data Show Residential Per Capita Water Use across California*, PACIFIC INSTITUTE (Nov. 18, 2014) <http://pacinst.org/new-data-show-residential-per-capita-water-use-across-california/>.

plan would keep San Antonio at the fore-front of conservation and could have the potential to be a future water supply.

9. Has the Vista Ridge project been properly vetted by the San Antonio City Council?

If the Vista Ridge project is the right project for San Antonio, it will withstand the scrutiny of review and time; however, a public process has been lacking. The contract negotiation sessions did not allow for any public input. Only one public hearing was held before the final draft of the agreement was rushed through City Council late last year.⁷⁴ No evidence exists that SAWS or the City Council conducted a thorough analysis of the Vista Ridge project. If such an analysis exists, it hasn't been shared with the affected public, in San Antonio, in the water exporting counties, or anywhere along the 142-mile long route.

While supported by the City Council and the San Antonio Chamber of Commerce, the Vista Ridge project drew heated opposition from a broad segment of concerned citizens and community interest groups from San Antonio and across the central Texas region.

Consumer, environmental, social equity, and fiscal accountability advocates raised a broad range of questions and objections. Community members from Burleson, Lee, Milam and Bastrop counties argued that the Vista Ridge Project's level of pumping would threaten local wells, springs, and rivers dependent on spring flows. They objected to the process and basis for approval of the groundwater pumping by the appointed board members of the POSGCD. Conservation groups, landowners and others from up and down the I-35 corridor joined together to object to the project as unsustainable and irresponsible, causing more harm than good.

Perhaps most significantly, the San Antonio City Council completely failed to meet its fiduciary responsibility to local citizens by not carrying out even the minimum of due diligence prior to their hasty approval of the project. Such a massive and long-term commitment merits an independent third party to complete a written, detailed analysis of project costs, benefits, risks, and tradeoffs versus other feasible alternatives prior to voting on the project.

The City Council's abject failure to perform its due diligence has raised both questions and suspicions. These questions were heightened by SAWS staff's previous rejection of the Vista Ridge project and sudden reversal. One well-known, longtime

⁷⁴ Public Hearing on Vista Ridge before the San Antonio City Council (Oct. 8, 2014), *available at* <http://nowcastsa.com/blogs/public-hearing-saws-vista-ridge-water-supply-agreement>.

observer and analyst of San Antonio's water history and policy could only ascribe this outcome to "murky, Texas water politics".

In the twelve months since the Council signed the contract, questions linger, and even more have been raised. The recent disclosure by San Antonio Express-News Reporter Brian Chasnoff that a City Council-commissioned independent review of SAWS water planning, which included critical comments of the Vista Ridge project, had been delayed from public disclosure raised further questions about the Vista Ridge project. That SAWS has recently backtracked on releasing the draft of its 2015 Water Management Plan for comment – which would detail its overall water supply assumptions and costs, including Vista Ridge – adds more fuel to the fire of criticism and questioning of what this lack of transparency is concealing from public scrutiny.

Key questions which remain unanswered are:

1. Where is the thorough, written analysis of the financial, social, economic, and environmental impacts of the Vista Ridge project, and comparison to the best alternatives listed above?
2. How much will the total project actually cost? The prior-to-the-signed-contract discussions did not include the costs of integration of the Vista Ridge project with SAWS' existing infrastructure. Also not included in the discussions before the City Council unanimously approved the contract were the costs for other predictable cost categories such as major maintenance.
3. What would SAWS' new role as a regional water broker mean for San Antonio and for all of Central Texas?

If such analyses and answers to the questions exist, they have not been shared with the public in San Antonio, in the water-exporting counties, or anywhere along the 142-mile long pipeline route. Attempts to ascertain if such analysis and facts exist have resulted in SAWS and City of San Antonio appealing to the State Attorney General's Office to avoid disclosure of relevant documents in their possession.

If this were a federally-funded project, such an analysis and disclosure of relevant documents would be required, public comments on an "environmental impact statement" would be solicited, with required responses to comments providing in writing, and public hearings would be held along the 142-mile pipeline corridor.

Similarly, if this \$3.4 billion commitment were contemplated by a major corporation (any major corporation, pick your favorite), management would be required to produce voluminous studies evaluating all risks and options, and make a solid case to the Board

of Directors that the best option is on the table and should be approved. Clear benchmarks and measurements of success would be set and monitored.

Yet, for the \$3.4 billion, 30-year Vista Ridge project, the City Council and the public were given only PowerPoint slides and a brief sales pitch by SAWS executives.

Subsequent briefings by SAWS and the project team have cast little light on the many questions raised by project critics or on the current status of the project.

10. If San Antonio residents and the communities overlying the source aquifers don't benefit from Vista Ridge, who does?

Owners of 95% of the land in Bureson and Milam counties, the location of the Vista Ridge project's groundwater leases, did not lease their groundwater rights to the Vista Ridge consortium. Although their aquifers are threatened by Vista Ridge pumping, they won't see a dime of the money involved in the Vista Ridge transaction. This is not to mention the landowners in neighboring counties which also overlie the source aquifers for the Vista Ridge project, but whose groundwater rights are under the jurisdiction of a different GCD.

But even those landowners who did lease their groundwater can expect a pittance in comparison to the millions that BlueWater Systems will walk away with. BlueWater, who assigned the groundwater leases to Abengoa Vista Ridge, has negotiated to receive \$460 per acre-foot of water sold to SAWS.⁷⁵ That's equal to \$23 million per year or \$690 million over thirty years. From their profits, BlueWater will likely pay landowners who leased their groundwater rights only 10% in royalties.

POSGCD will collect up to \$2.77 million per year from Abengoa Vista Ridge for the combined production and transport fee.⁷⁶

As discussed earlier, San Antonio ratepayers will pay a premium for higher interest rates on the construction loans and to cover Abengoa Vista Ridge and BlueWater's profits in order for them to assume the project's risks.

The remaining revenue Abengoa Vista Ridge receives for the water would be used to pay back the bonds with interest and as a return on Abengoa S.A.'s initial

⁷⁵ WIPA, Reference Document 3, Groundwater Lease Conveyance Agreement, 9 (Nov. 4, 2014) *available at* http://www.saws.org/your_water/waterresources/projects/vistaridge/docs/201502_SAWS_VistaRidge_WaterTransmissionAndPurchaseAgreement_FINAL.pdf.

⁷⁶ POSGCD, District Rule § 9.1(6)(b) *available at* <http://www.posgcd.org/district-information/district-rules/> ("A combined production and transport fee not to exceed \$0.17 per thousand gallons of groundwater transported outside the boundaries of the District.").

investment, that is, their profit for undertaking the project. According to former SAWS Board of Trustees member Reed Williams, "The provider [Abengoa S.A.] will be putting in \$82 million, for which they will get a \$17.2 million/yr return or about a 21% annual return on equity."⁷⁷ If all 50,000 acre-feet/year are delivered, Abengoa S.A. will get a gross return of \$516 million on an \$82 million investment.

Conclusions

The Vista Ridge project conflicts with long-standing San Antonio community values and water policies. The project has not been thoroughly vetted. Documentation is limited. The documentation that does exist contradicts claims made by SAWS and project supporters, most notably on key points of affordability, reliability, and sustainability.

The project also threatens real harm to the communities overlying the source aquifers and to property owners, communities, and the environment along the 142-mile corridor of the proposed Vista Ridge pipeline. The social, economic, and environmental costs of the project have not been considered or incorporated into the project review. Affected individuals and communities outside the San Antonio service area have been left out of the process.

Requests for Action

1. **Based on our analyses, we call on the San Antonio Mayor and City Council to withdraw from the Vista Ridge project immediately.** The November 2014 contract calls for a 18-30-month option period in which either San Antonio or Abengoa may exit the contract for any reason. The maximum San Antonio would have to pay is \$40 million in reimbursable expenses - a major sum of funds, but only 1.1% of the estimated project cost. In all likelihood the exit fee would be much less; the sooner San Antonio exits the project, in general terms, the less it will be required to pay Abengoa.
2. **If the Council will not immediately exit the Vista Ridge contract, they should insist on a transparent, due diligence analysis of the questions raised in this position paper before approving any rate increases or closing on the contract. There is no emergency or other reason to rush into financial close.** City Council and SAWS should immediately launch an open, fully transparent due diligence and public engagement process that examines all of the benefits and "external"

⁷⁷ Reed Williams, Former Board of Trustees member, SAWS, Presentation to SAWS Rate Advisory Committee (Sept. 16, 2014).

costs imposed on San Antonio and all of the communities, property owners, and the environment impacted by the Vista Ridge project before committing its ratepayers to the high costs of Vista Ridge.

This due diligence and public engagement process should:

- a. Promptly disclose all relevant information on SAWS' website without requiring public information requests to secure that information, including all documents supporting SAWS staff's initial recommendation to reject the Vista Ridge project and all of the other expensive, long-distance pipeline proposals;
 - b. Initiate and complete a full federal Environmental Impact Statement, and accompanying public hearing and public comment processes, as required by the construction of the 142-mile pipeline across multiple river crossings, Interstate 35, and the Edwards Aquifer recharge zone;
 - c. Engage all communities that will or may be affected by the proposed Vista Ridge project (and by any sales of water from the project to other entities) in the evaluation process and address all social, environmental, and economic impacts on those communities, and establish standards for minimizing adverse impacts and paying compensation for unavoidable impacts on local communities and economies;
 - d. Prioritize the evaluation of one or more sustainable water alternatives that prioritize water efficiency, conservation, reuse, and locally-sourced water supplies; and
 - e. Ensure meaningful monthly progress reports on the above and a current accounting of expenditures by Abengoa and SAWS on the Vista Ridge project as required by the executed contract.
3. We further request that, in order to protect the Edwards Aquifer and the sustainability and affordability of SAWS' water supplies while the above work is underway, we ask that the City Council and SAWS act now to:
- a. Halt all extensions of water and sewer service over the Edwards Aquifer recharge and contributing zones by withdrawing its "Certificate of Convenience and Necessity" (CCN) boundary to developments with existing service commitments;

- b. Evaluate SAWS' CCN in the rest of its service area, and refuse service to any wasteful, or water exporting entities (such as the recent Niagara water bottling proposal); and
- c. Require all applications for service extension to new development to include a water use and reuse plan that moves toward "water neutral" or "net zero" development, to the maximum extent practicable.

Appendix A: Endorsements

We, the undersigned, are of different backgrounds and viewpoints. However, we have come together and agree that the Vista Ridge project, as currently proposed, will harm people, communities, and the environment from Bexar to Burleson County. We urge the City of San Antonio to withdraw from the Vista Ridge contract, or at the very least, take time to perform a transparent due diligence and public engagement process to address these concerns.

**Alamo Sierra Club
Bexar County Green Party
Central Texas Aquifers Coalition
Clean Water Action
Environment Texas
Environmental Stewardship
Esperanza Peace and Justice Center
Greater Edwards Aquifer Alliance
League of Independent Voters of Texas
Lost Pines Water Defense Fund
Martinez Street Women's Center
Neighbors for Neighbors
Save Our Springs Alliance
Texas Organizing Project
Westside Preservation Alliance
Wimberley Valley Watershed Association**