TERRILL & WALDROP
ATTORNEYS and COUNSELORS

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

November 11, 2021

VIA EMAIL
Mr. Alan M. Day – Brazos Valley GCD
Mr. David Van Dressar – Fayette County GCD
Mr. Jim Totten – Lost Pines GCD
Mr. David Bailey – Mid-East Texas GCD
Mr. Gary Westbrook – Post Oak Savannah GCD

Re: Blue Water Vista Ridge/Blue Water 130 Project – Response to Recent Post Oak Savannah and Lost Pines GCD Decisions on Proposed GMA-12 Desired Future Conditions

Dear Groundwater Management Area No. 12 Representatives:

Blue Water Vista Ridge LLC, permit administrator for the Vista Ridge Project, and Blue Water 130 Project, LP, permit holder for the Blue Water 130 Project (collectively, "Blue Water") has continued to closely monitor 11th hour developments among the Groundwater Management Area No. 12 ("GMA-12") member districts, including the votes earlier this week by the Lost Pines Groundwater Conservation District ("LPGCD") and Post Oak Savannah Groundwater Conservation District ("POSGCD") in support of yet another model pumping scenario, referred to as Scenario S-20, which upon early analysis represents a radical modification of the GMA-12 Desired Future Conditions ("DFCs").

With this latest proposed model scenario, it has increasingly become clear that GMA-12 is now at a crossroads in which the very viability of the regional planning process is under threat of losing all credibility. Blue Water respectfully urges the GMA-12 members to reject this last-minute attempt to throw out all science, disregard the increased productivity of the Simsboro and Carrizo aquifer formations represented by the science-based new, improved Groundwater Availability Model ("GAM") and instead, employ the legally and scientifically unsupportable approach of adopting a policy goal of no additional pumping of these prolific aquifers over the next 50 years through incorporation of a model run specifically adopted to achieve this goal. If GMA-12 were to adopt this approach, it would require willful disregard of both the Texas Water Code Chapter 36 substantive (the nine statutory factors and requirement that the DFC represent a balance between the highest practicable level of production and conservation) and procedural (public notice and comment period) DFC adoption requirements. As a result, such an approach is legally indefensible.

Blue Water provides a brief overview as to how GMA-12 got to the point of even considering such a radical departure from proper statutorily-compliant area planning. In May 2021, GMA-12 proposed that the modeled aquifer declines associated with Scenario S-12 be adopted as DFCs. Per Chapter 36.108, S-12 was provided to the public for a 90-day period of

review and comment at that time. Blue Water provided comments prior to the formal proposal for adoption of S-12 raising concerns about POSGCD's attempts to artificially reduce existing, ongoing Carrizo pumpage included in the State Water Plan which were known to the GMA-12 representatives when they took the correct action of rejecting those attempts.[1] In mid-July, near the end of the 90-day comment period, POSGCD submitted a "position paper" in which it continued to advocate disregard of existing Vista Ridge Project Carrizo pumping in establishing the GMA-12 DFCs. Blue Water submitted a timely response to the GMA-12 representatives.[2] POSGCD's attempt to exclude existing Carrizo pumpage was properly rejected by GMA-12, which again voted to adopt the DFCs resulting from the S-12 scenario.

In the months following the comment period, several significant changes to the S-12 pumpage inputs have been proposed, and until very recently, were largely rejected by the GMA-12 board members. During the GMA-12 meeting on October 13, 2021, LPGCD proposed that a new DFC simulation (Scenario S-19) be formulated such that the resulting Simsboro DFC drawdown would be limited to approximately 240 feet within LPGCD. Scenario S-19 represents a redefinition of the DFC and subsequent MAG for the Simsboro in GMA 12, which are summarized by:

- Removal of approximately 44,000 ac-ft/yr of Simsboro model input pumpage from sites within LPGCD. This change represents a 35% reduction in LPGCD Simsboro pumpage from S-12 and is tantamount to a 44,000 ac-ft/yr reduction in the Simsboro MAG in LPGCD.

- The reduced model input pumpage (MAG) results in 24% decrease in the Simsboro DFC in LPGCD from 313 feet to 239 feet. The reduction also results in a decrease in the POSGCD Simsboro DFC from 336 feet to 277 feet (18% decrease from S-12)

A LPGCD board member, the same person that advocated for scenario S-19, discovered that retention of the Simsboro DFC of 240 feet of available drawdown from the two previous planning cycles did not achieve the intended effect of allowing no additional pumping from the Simsboro for the next 50 years. Thus, LPGCD reconsidered its proposed S-19 and voted in its November 8, 2021 board meeting to authorize the creation of *yet another* model scenario (Scenario S-20) that includes even greater changes to the Simsboro pumpage inputs and subsequent DFCs:

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[1] A copy of Blue Water's initial comments is attached as **Exhibit A**. Notably, at POSGCD's November 9 board meeting, the district voted to exclude those comments from the Chapter 36 required submission of summary of comments on the ground that they were received outside the 90-day official comment period for consideration of the DFCs derived from Scenario S-12. Blue Water's comments should be included, as they were submitted, publicly-posted on the GMA-12 site, and clearly available to the GMA-12 representatives during the noticed comment period.

[2] Once again, Blue Water responded to that position paper in early August and, once again, the POSGCD voted on November 9, 2021 to exclude from Blue Water's response from its summary of comments as outside the 90-day comment period. These comments were clearly taken into consideration by the GMA-12 representatives in subsequent meetings. Blue Water questions what exactly POSGCD is attempting to accomplish by excluding these substantive comments. Blue Water's August 2021 response to POSGCD's position paper is attached as **Exhibit B**.

- Removal of more than 92,000 ac-ft/yr of Simsboro model input pumpage from sites within LPGCD. This change represents a **74% reduction in LPGCD Simsboro pumpage** from S-12 and is equivalent to a 92,000 ac-ft/yr reduction in the Simsboro Modeled Available Groundwater in LPGCD.

- The reduced model input pumpage (MAG) results in 42% decrease in the Simsboro DFC in LPGCD from 313 feet to 183 feet. The reduction also results in a decrease in the POSGCD Simsboro DFC from 336 feet to 257 feet (24% decrease from S-12).

The following evening, November 9, the POSGCD board voted to support LPGCD's proposed Scenario S-20 *before the simulation had even been created or run by LPGCD's hydrogeologic consultant*.

Given these major changes in the modeled Simsboro pumpage and impacts, it is clear that scenarios S-19 and S-20 represent *significant* re-definitions of the DFCs—scenarios S-19 and S-20 are not minor revisions to the proposed DFCs based on public comments but are entirely new DFCs requiring notice and public comment. The Scenario S-19 and S-20 model files have only been available for a few days and have not been fully reviewed or checked for accuracy by other GMA-12 hydrogeologic consultants. The changes proposed in Scenarios S-19 and S-20 are large and require a reasonable period of time for public review and comment.

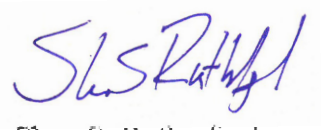
When GMA-12 meets on November 12, 2021, there will be 54 days before the DFC approval deadline of January 5th, 2022. There is not adequate time to evaluate the merits of either scenario. Indeed, consideration of both the S-20 scenario is particularly inappropriate and legally indefensible in the current round of regional planning. Whereas the S-19 revisions were significant and subject to only cursory evaluation, the DFCs produced by S-20 are not a mere tweak but a radical departure from the properly posted DFCs based on S-12. Therefore, the GMA-12 *must* have time to thoroughly evaluate the far-reaching effects of such a drastic change to the DFCs, including the potential unintended consequences.

A legally proper evaluation must include consideration of the nine Chapter 36 factors *prior to* voting to adopt S-20 derived DFCs. Texas Water Code Section 36.108 requires "*before* voting on the proposed desired future conditions of the aquifer" that districts "*shall consider*" each of the nine factors, including the water supply needs included in the state water plan (36.108(d)(2)), the hydrological conditions of each aquifer (36.108(d)(3)), the resulting expected socioeconomic impacts (36.108(d)(6)), private property rights of landowners, lessees and assigns (36.108(d)(7)), and indeed, the very feasibility of achieving the resulting DFCs (36.108(d)(8)). There was *no such analysis* performed by either POSGCD or LPGCD in their respective meetings earlier this week. Yet it is already readily apparent that adoption of S-20 based DFCs would fail to meet the requirement that the DFCs achieve a "balance between the highest practical level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater … in the management area."

Adoption of DFCs based on S-20 would further violate the Chapter 36 procedural requirements, which require "a period of *not less than 90 days* for public comments." This brand-new pumping scenario did not even exist when POSGCD and LPGCD held their respective votes this week. Even if adopted at the November 12 meeting, the resulting DFCs could not be approved before the second week of February 2022, or more than a month after the January 5 deadline established by Section 36.108(d-3). In short, the GMA-12 districts cannot both comply with the statutory procedural requirements and meet the statutory deadline for DFC adoption.

Because adoption of DFCs resulting from model scenario S-20 cannot be accomplished without providing for adequate time to perform a meaningful evaluation of the effects and without running afoul of the Chapter 36 substantive and procedural requirements, GMA-12 must reject this last-minute attempt to drastically alter the DFCs at the very end of this planning cycle.

Sincerely,



Shan S. Rutherford
TERRILL & WALDROP

cc: Ross Cummings, Blue Water Vista Ridge, LLC
James Bene, R. W. Harden & Associates, Inc.
Liz Ferry, R. W. Harden & Associates, Inc.
Barbara Boulware-Wells, POSGCD General Counsel

EXHIBIT

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TERRILL & WALDROP
ATTORNEYS and COUNSELORS

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

November 10, 2020

VIA EMAIL
Mr. Gary Westbrook
General Manager
Post Oak Savannah Groundwater Conservation District
310 E. Avenue C
Milano, Texas 76556
gwestbrook@posgcd.org

Re: Blue Water Vista Ridge – Desired Future Conditions

Dear Mr. Westbrook:

Blue Water Vista Ridge LLC ("Blue Water") is keenly interested in the accuracy and transparency of the model inputs for the current Desired Future Conditions ("DFC")/Modeled Available Groundwater ("MAG") planning cycle for the Post Oak Savannah Groundwater Conservation District ("District") and GMA 12. Blue Water submits these comments to ensure the accuracy and transparency of model inputs used by the District and GMA 12.

As an initial matter, there are several baseline facts that must be taken into account in connection with DFC/MAG planning cycle. The Vista Ridge Project relies on 9 Carrizo and 9 Simsboro wells to produce groundwater sufficient to meet the needs of the 142 mile Vista Ridge pipeline project serving the City of San Antonio. After extensive hearings and public process (in multiple permit applications over many years), the District approved operating and transport permits for Carrizo production in the amount of 15,000 acre-feet per year and Simsboro production in the amount of 40,835 acre-feet per year. Blue Water has paid millions of dollars in fees to the District in amounts that are specifically tied to the District's permitted production from the Carrizo and Simsboro aquifers. Nine Carrizo wells for the Vista Ridge project have been drilled—at very substantial expense—and those Carrizo wells commenced production for the Vista Ridge Project on April 15, 2020.

Blue Water recently learned that the District is apparently supporting an effort to use inaccurate Carrizo aquifer model inputs in connection with the DFC/MAG planning cycle for the District and GMA 12. In particular, Blue Water has learned that: (a) the District has reviewed the output of GMA 12 Simulation S7, which predicts Carrizo drawdown within the District of 176 feet over the current planning horizon (2010-2070) based on the accurate input of 15,000 acre-feet of production for Vista Ridge; (b) the District's DFC Committee apparently finds that level of drawdown unacceptable; and (c) the District intends to inaccurately reduce the *known* 15,000 acre-

feet Vista Ridge Carrizo pumpage to *artificially* produce lower simulated Carrizo drawdowns and a resulting lower DFC for Carrizo pumpage within the District. Blue Water is very concerned about any such effort to use inaccurate model inputs, especially when such a decision appears motivated by a desire to manipulate the results, rather than accurately model the results using known, accurate model inputs.

Accurate model predictions require accurate model inputs. That is especially true with respect to future groundwater production from a known, permitted groundwater project with wells and infrastructure that have been built (at the cost of hundreds of millions of dollars) and which is in production—as is the case with the Vista Ridge Project. Unlike many other groundwater permittees in the region, Vista Ridge Carrizo production is permitted, known, in production and will be very consistent and predictable for the next six decades (which is the minimum timeframe covered by the 30 year contracts with San Antonio Water System). Thus, the District's apparent decision to reduce the amount of Carrizo production in Simulation S7 is contrary to the District's actual knowledge of the Vista Ridge project, will materially diminish the accuracy of its predictions and, subsequently, the validity and usefulness of the DFCs and MAGs derived from it. As you know, the amount and distribution of drawdown due to Vista Ridge pumpage has been acknowledged and approved by POSGCD for more than a decade. During permitting of Blue Water's Carrizo production in 2008, the results of multiple GAM simulations were reviewed and accepted by POSGCD staff, hydrogeologic consultants, and board members. Current POSGCD monitoring data demonstrate that real-world aquifer response to Vista Ridge pumpage is consistent with the model results reviewed by the district.

In addition to artificially reducing known, permitted Vista Ridge production from the Carrizo aquifer, the District's apparent decision to wait until the tail end of the regional planning process raises additional concerns about the transparency of the District's participation in the GMA 12 planning process. The District's public advocacy to the GMA 12 committee meeting on October 22 that no further GMA 12 meetings take place through the end of the year means that there will be little or no time for corrective action for inputs that are known to be inaccurate.

Based on the foregoing, please let this correspondence serve as formal notice to the District and GMA 12 that accurate and transparent model inputs must be used for regional water planning. Establishing the DFC limits by artificial manipulation of known, predictable pumping violates Texas Water Code Chapter 36. Groundwater districts are tasked with developing their rules based on the use of the "best available science," defined as "conclusions that are logically and reasonably derived using statistical or quantitative *data*, techniques, analysis, and studies that are *publicly available* to reviewing scientists and can be employed to address a specific scientific question." TWC 36.015(a)-(b). Similarly, groundwater districts are required in the course of developing their management plans and amendments to those plans to use "the district's *best available data*" and are tasked with forwarding "that *data* to the regional water planning group for use in their planning process." TWC 36.1071(b).

The artificial reduction of known pumping also violates several other Chapter 36 criteria and raises serious constitutional concerns:

- DFCs must balance "the highest practicable level of groundwater production" with conservation goals. TWC 36.108(d-2).

- In adopting DFCs, groundwater districts are required to consider the water supply needs and water management strategies included in the state water plan. TWC 36.108(d)(2). The Vista Ridge project is included in the state water plan and represents an important source of potable water for a major metropolitan area, and it is thus unacceptable for the District and GMA-12 to adopt DFCs that do not account for the impacts associated with an established, large-scale public supply water system such as Vista Ridge.

- Groundwater districts are also required to consider the feasibility of achieving a DFC. TWC 36.108(d)(8). Because Vista Ridge production rates and volumes represent known quantities that can be relied upon for the foreseeable future, DFCs that do not incorporate impacts associated with Vista Ridge cannot be achieved and therefore fail to meet the TWC Section 36.108(d)(8) requirement.

- The Texas and U.S. Constitutions both protect private property rights, including property rights in groundwater, from unlawful takings. Blue Water has invested millions of dollars in reliance on its constitutionally-protected private property rights in groundwater. It is essential that those vested property rights be protected from unlawful takings and that the District not take action to confiscate those property rights.

Blue Water will take all necessary actions at the District level, with GMA 12 and its members, with the Texas Water Development Board, the courts and the state legislature to ensure that the District complies with its statutory and constitutional obligations with regard to establishing the next DFC for the Carrizo aquifer. To that end, it is essential that the 15,000 acre-feet of known, permitted Carrizo aquifer production for the Vista Ridge Project be included in the model input in this DFC/MAG planning cycle to comply with the legal requirements of Chapter 36.

Finally, as we recently commented in connection with the District's recent rulemaking activity, Blue Water remains concerned regarding the apparent shift from the District's longstanding practice of providing public notice of both Rules Committee and DFC Committee meetings and inviting public and stakeholder participation in these meetings. Blue Water routinely availed itself of the opportunity to attend and participate in these meetings. Yet, while the District continues to say it is concerned with transparency and public participation, for the past several months we continue to learn after the fact that these committees have met and decided major District policy issues without public notice and input. The apparent plan to reduce known Carrizo

pumpage in developing the DFC is further evidence of a lack of transparency. We continue to urge the District to return to its prior transparent model of governance and regulation.

Sincerely,

Paul M. Terrill III
TERRILL & WALDROP

cc: Ross Cummings, Blue Water Vista Ridge, LLC
James Bene, R. W. Harden & Associates, Inc.
Barbara Boulware-Ware, POSGCD General Counsel

TERRILL & WALDROP
ATTORNEYS and COUNSELORS

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

EXHIBIT
B

August 10, 2021

VIA EMAIL
Mr. Alan M. Day – Brazos Valley GCD
Mr. David Van Dressar – Fayette County GCD
Mr. Jim Totten – Lost Pines GCD
Mr. David Bailey – Mid-East Texas GCD
Mr. Gary Westbrook – Post Oak Savannah GCD

Re: Blue Water Vista Ridge – Response to Post Oak Savannah GCD July 14, 2021 Position Paper on Desired Future Conditions

Dear Groundwater Management Area No. 12 Representatives:

Blue Water Vista Ridge LLC ("Blue Water"), permit administrator for the Vista Ridge Project, is in receipt of the July 14, 2021 Post Oak Savannah Groundwater Conservation District ("POSGCD" or "District") "Position Paper" in which POSGCD offers opinions regarding the processes used during development of Desired Future Conditions ("DFCs") by the member groundwater conservation districts of Groundwater Management Area No. 12 ("GMA-12"). POSGCD's Position Paper is the District's latest effort—at least the fifth time in the past several months—to promote adoption of a DFC for the Carrizo aquifer that would ignore ongoing and exceptionally-predictable *POSGCD-permitted* pumpage from existing Vista Ridge Project wells.

The following facts are essential to the consideration of adopting a legally-defensible DFC and are *not in dispute*:

(i) The 15,000 acre-feet of annual production from the Carrizo Aquifer was approved by POSGCD in 2008.

(ii) The 15,000 acre-feet of permitted annual production and associated drawdown from the Carrizo Aquifer was known by the District during every DFC planning cycle.

(iii) POSGCD has collected approximately $5.7 million in fees for the 15,000 acre-ft/year of Carrizo production since it was permitted to Blue Water Systems in 2008.

(iv) In 2012, the Vista Ridge Project was approved and adopted into the State Water Plan as a Water Management Strategy to provide groundwater to San Antonio Water System ("SAWS").

(v) In November 2014, SAWS entered into a publicly-available and well-known 30-year contract for the purchase of 50,000 acre-feet per year from the Vista Ridge Project, which contract specifically included the 15,000 acre-feet of Carrizo production authorized by POSGCD.

(vi) Beginning in 2017, nine Carrizo Aquifer wells were drilled and completed at substantial expense for use as part of the Vista Ridge Project in reliance on the permits issued by POSGCD.

(vii) On April 15, 2020, the nine Carrizo Aquifer wells for the Vista Ridge Project commenced commercial operations and have been in operation since that time.

Table 8-1 of the POSGCD Management Plan lists Modeled Available Groundwater ("MAG") values for the Carrizo aquifer ranging from 4,025 ac-ft/yr in 2010 to 7,059 ac-ft/yr in 2060. The MAG values represent the amount of Carrizo pumpage input into the Groundwater Availability Model ("GAM") simulation used to define the currently-adopted DFCs. Blue Water's inspection of the regional distribution of GAM pumpage indicates that the Carrizo pumpage used to derive the DFCs adopted during both the first (2010) and second (2016) rounds of DFC joint planning included *none* of the 15,000 acre-ft/year Vista Ridge Project Carrizo pumpage that was permitted by POSGCD in 2008. Because the GAM excluded *all* of the 15,000 acre-feet/year for the Vista Ridge Project, the currently-adopted Carrizo DFC drawdown limit is set to an unrealistically low value that does not reflect current, actual production from the nine Vista Ridge Project Carrizo wells—and is therefore both unreasonable and unachievable. It is worth noting that, while POSGCD has repeatedly declined to include Vista Ridge Project Carrizo pumpage in DFCs since the beginning of DFC/MAG joint planning in 2010, it has collected Carrizo permit fees totaling approximately $5.7 million.

During previous DFC planning cycles, POSGCD attempted to justify the exclusion of Blue Water's Carrizo pumpage because of implied doubts as to whether the POSGCD-permitted pumpage would come to fruition. Given that the nine permitted Vista Ridge Project Carrizo wells were completed in 2018, began full production in 2020, and will continue to produce groundwater throughout the 40-year permit term (and likely beyond), any such doubts upon which POSGCD formerly relied have been resolved. It is no longer reasonable to omit the 15,000 acre-ft/year of Carrizo Aquifer permitted pumpage from the current DFC joint planning process. Substantial investment was made in those nine Carrizo Aquifer production wells and the $3 billion Vista Ridge Project relies on production from those wells.

POSGCD's neighboring districts in GMA-12 have properly recognized that known, ongoing pumpage must be accounted for in the DFC. Thus, the neighboring GMA-12 districts have correctly rejected POSGCD's attempts to artificially exclude Vista Ridge Carrizo pumpage from the current DFC simulation. POSGCD has accused the other member districts

of GMA-12 of wrongly considering "known pumpage" which the District characterizes as not being one of the statutory factors that must be considered in establishing a DFC. POSGCD further argues that, because "known pumpage" is not a previously-employed, clearly-defined term, it should not be used by their neighboring districts as a reason for rejecting POSGCD's proposed model inputs. POSGCD's argument fails to address the other GMA-12 districts' rational insistence that the regional water planning process be based on accurate projections of future aquifer conditions.

On page 5 of their position paper, POSGCD suggests that inclusion of known, existing permitted pumping in the GAM DFC simulation inputs will result in subsequent real-world impacts that will require the modification or replacement of 140 Carrizo wells. What POSGCD fails to address is that the amount and distribution of drawdown due to the 15,000 acre-ft/year of Carrizo pumpage was approved by POSGCD in 2008 and the results of that production were predictable and well-known—both then and now. During permitting of the 15,000 acre-feet of Carrizo production in 2008, the results of multiple GAM simulations were reviewed and accepted by POSGCD staff, hydrogeologic consultants, and board members. Current POSGCD monitoring data demonstrate that real-world aquifer response to Vista Ridge pumpage is consistent with the model results reviewed and approved by the District. POSGCD's complaint that using accurate pumpage inputs for DFC planning results in intolerably-large, unforeseen future impacts is not consistent with the District's review and approval of the 15,000 acre-ft/year of Carrizo production.

POSGCD's argument would have the other member districts ignore the statutory requirements governing districts both in general and in the specific context of the regional planning process. Section 36.0015 of the Texas Water Code requires groundwater conservation districts to use the "best available science," which means formulating rules and policies that are based on conclusions that are logically and reasonably derived using statistical or quantitative data. Similarly, Texas Water Code Section 36.108(d)(2) requires that groundwater conservation districts "*shall consider the water supply needs and water management strategies included in the current state water plan*" before adopting DFCs. The Vista Ridge Project was included in the 2017 state water plan as a Recommended Project related to a Water Management Strategy for the San Antonio Water System and represents an important source of potable water for the seventh largest city in the United States.

Finally, Texas Water Code Section 36.108(d)(8) requires that districts consider "the feasibility of achieving the desired future condition." Blue Water submits that disregard of POSGCD-approved and known permitted pumping would render any artificially-suppressed DFC for the Carrizo impossible to obtain. While Blue Water recognizes that the statutory factors must each be considered and balanced in establishing the DFC, POSGCD's attempt to manipulate the best available science by intentionally disregarding known, predictable, permitted pumping would violate the District's statutory obligations to use best available

science, consider regional water supply needs, and adopt DFCs that are feasible. GMA-12 should continue to reject POSGCD's efforts to exclude the 15,000 acre-ft/year of known Carrizo Aquifer production that POSGCD permitted in 2008.

Sincerely,

Paul M. Terrill III
TERRILL & WALDROP

cc: Ross Cummings, Blue Water Vista Ridge, LLC
James Bene, R. W. Harden & Associates, Inc.
Liz Ferry, R. W. Harden & Associates, Inc.
Barbara Boulware-Wells, POSGCD General Counsel