



April 1, 2016

Texas Water Development Board
Attention: Tom Entsminger, State Programs Coordinator
PO Box 13231
Austin, Texas 78711

Via email: boardmembers@twdb.texas.gov
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swift@twdb.texas.gov

Re: Objection to abridged applications for SWIFT funding filed by Central Texas Regional Water Supply Corporation and San Antonio Water System

Dear Chairman Bruun, Board Member Jackson, Board Member Lake, and Mr. Entsminger,

Please accept this objection to the above-referenced applications on behalf of a region-wide coalition opposed to the Vista Ridge water supply project. The Vista Ridge project is an unsustainable massive infrastructure project that, if built, will mine a rural aquifer over a many-county area to provide water to a single utility far in excess of demand and should not receive SWIFT funding.

The San Antonio Water System (“SAWS”) and the Central Texas Regional Water Supply Corporation (“CTRWSC”) submitted two abridged applications to the Texas Water Development Board for SWIFT funding: 1) a “joint” application from SAWS and CTRWSC for \$885 million over four years to fund the construction of the Vista Ridge pipeline; and 2) an application from SAWS alone for more than \$127 million to fund the integration infrastructure necessary for the Vista Ridge pipeline.

Neither of these projects should be eligible for SWIFT funding. However, if the Board determines that they are eligible, the Board should exercise its discretion and refuse to provide SWIFT funding for the Vista Ridge project for several reasons, as set out below. Certainly, neither project qualifies for SWIFT funds earmarked for conservation projects.

1. The Vista Ridge project should not be eligible for SWIFT funding.

Because of the public-private nature of the project, the Vista Ridge project and the accompanying integration project should not be eligible for SWIFT funding. Under the

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existing agreement between SAWS and Abengoa Vista Ridge, LLC (“Project Company”), it is the Project Company, a private company, who is responsible for designing, financing, and constructing the project. The Project Company created the CTRWSC to “facilitate and serve the public purpose” of the Vista Ridge Project, namely for acquiring pipeline easements and rights-of-way through its eminent domain authority. The agreement calls for the Project Company to provide a loan to the CTRWSC to finance the design and portions of construction to be owned by the WSC (i.e., the easements). The agreement is clear that SAWS is not responsible for financing the construction of the pipeline, although it is responsible for the integration infrastructure.

Because the project agreement does not give SAWS borrowing authority, and because neither the San Antonio City Council nor the SAWS Board of Directors has since given SAWS borrowing authority, it is clear that SAWS is ineligible to borrow money for the construction of the Vista Ridge pipeline. What is unclear is how the Project Company can delegate its financing responsibility to a conduit water supply corporation, in an effort to acquire low-interest state loans that the Project Company itself would not otherwise be eligible for.

Although the CTRWSC is a non-profit water supply corporation created under Chapter 67 of the Texas Water Code, it is wholly controlled by a four-member board of directors, a majority of whom are affiliated with the privately owned Vista Ridge Project Company. (See attached copy of the corporation’s bylaws.) It does not provide retail water service, and its four directors are also its only members, meaning they retain full control of the WSC’s operations. In short, CTRWSC is simply a shell corporation wholly controlled by the private, for-profit Abengoa corporation. As a result, it does not qualify for SWIFT funding.

To provide SWIFT funding to CTRWSC would violate the spirit of the TWDB’s financial assistance programs, which are meant for political subdivisions of the state. When voters approved Proposition 6 in 2013 to create the SWIFT program, they approved using \$2 billion in tax dollars to fund public projects. These funds were never meant to fund private projects. Allocating SWIFT funds for the Vista Ridge project would set a dangerous precedent by which any private entity could create a shell water supply corporation in an attempt to access low-interest state loans.

For these reasons, we urge the Board to conclude that the Vista Ridge project is ineligible for SWIFT funding.

2. Even if the Vista Ridge project is eligible, it should not receive SWIFT funding.

Even if the Board determines that the Vista Ridge project is eligible for consideration, because of false and misleading statements made by the applicants on the abridged applications for both the pipeline and the integration projects, the Vista Ridge project should be disqualified or, in the alternative, prioritized at the bottom of the list.

Contrary to claims made on the abridged applications, the military bases are not current SAWS customers. Both applications represent that “SAWS currently serves” the five military bases. While the utility and the bases may be working toward SAWS service for the future, the fact remains that these military bases are not current SAWS customers. It was misleading for the applicants to represent otherwise.

There are no actual agreements to support the applicants’ claims of regionalization. The Vista Ridge project was sold to its ratepayers as a local project necessary to meet increasing water needs. Now it is being marketed as a “regional” project. Although the applicant states that “SAWS has initiated dialog with several such entities regarding wholesale agreements,” no such agreements exist. According to current agreements, the Vista Ridge project would provide 50,000 acre-feet of water to SAWS customers only whether they need it or not.

The necessary production and transport permits will expire before the term of the project. Although the Vista Ridge pipeline and integration projects ranked 37 and 41 out of 61 recommended water management strategies listed in the Region L plan, this ranking was partly based on an inaccurate scoring regarding the necessary legal rights to use the water, something that was also mentioned in the abridged applications. The Vista Ridge project received maximum points because it *currently* holds production and transport permits needed to use the water; however, those permits will expire in 2044 and 2034, respectively, while the project term lasts until at least 2050. This information was not made clear in the Region L plan and ranking.

The State’s own groundwater availability model predicts that pumping for the project will violate local Groundwater Conservation District standards, impacting a large region of Central Texas. Another factor that the Region L planning group considered when ranking the Vista Ridge project was whether supporting data was available to show the quantity of water requested was available. Although the Vista Ridge project received the maximum number of points under this particular criterion, there is no explanation for what supporting data the regional ranking is based upon. The abridged application references hydraulic engineering, aquifer test wells, and environmental studies completed by the project team during the Development Phase – all information that, if it exists, has been withheld from the public by the private companies involved in the public-private Vista Ridge contract.

In an effort to provide the public with this critical, missing information, hydrologist George Rice ran the State’s own groundwater availability model to predict the impacts of pumping from the Vista Ridge project. The State’s model predicted that, alone, Vista Ridge pumping would cause the Post Oak Savannah GCD to exceed its DFCs for the Simsboro Aquifer by 2060. Combined with other approved pumping not yet considered in the current baseline,

(such as the Forestar project in Lost Pines GCD), the model predicts that the GCD will exceed its Simsboro DFCs sometime between 2020 and 2030.

Post Oak Savannah GCD set its Simsboro DFCs at 300 feet of drawdown. The GAM predicts that baseline pumping will lead to 279 feet of average drawdown, while baseline plus Vista Ridge pumping will lead to 402 feet of average drawdown in the Simsboro in 2060. When calculating other approved pumping, the GAM predicts drawdown of as much as 517 feet in 2060. Maps of the impacts of pumping on the Simsboro and related aquifers in the Carrizo-Wilcox Group shows drawdown impacts in many counties outside and south of Groundwater Management Area 12 (GMA-12). GMA-12 is the management area in which Vista Ridge pumping is permitted and is required by law to do joint planning. Drawdown in the related Carrizo, Calvert Bluff, and Hooper aquifers of 100 ft or more are predicted by the groundwater availability model (GAM) to extend as far south as Gonzales, Lavaca, Colorado, Austin, Grimes, and Walker counties. Copies of George Rice's reports are attached.

Furthermore, the regional planning groups may not recommend water management strategy supply volumes that result in exceeding the modeled available groundwater. The Region L plan noted that the MAG-limit (and thus recommended size) for the Vista Ridge project is 19,442 acre-feet/year in 2020, growing to 34,894 acre-feet/year in 2070. However, the agreement between SAWS and the Project Company requires SAWS to pay for as much water as is delivered, up to 50,000 acre-feet per year, starting as early as 2020, thereby providing no incentive to limit the pumping to the MAG.

SWIFT funding should be reserved for those projects that protect our limited groundwater supplies and comply with local groundwater protection standards. The science shows that Vista Ridge will violate local standards. The structure of the Vista Ridge contract dictates excessive and wasteful groundwater pumping with resulting real harm to wells and springs in the source water areas.

Describing the Vista Ridge project as a conservation project conflicts with the statutory definition of conservation. The Vista Ridge project should not receive any prioritization points for its projected effect on water conservation, nor should it be funded through the minimum 20 percent allocated toward conservation funds (as is described in the following section).

When prioritizing projects, the Board must consider the effect of the project on water conservation. Tex. Water Code § 15.437(d). With regard to the various water assistance programs, including SWIFT, the Texas Water code defines "conservation" as "the development of water resources; and those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses." Tex. Water Code § 15.001. The

Vista Ridge project is not designed to reduce consumption of water, reduce loss or waste of water, or to improve efficiency, recycling, or reuse of water. Plain and simple, the Vista Ridge project proposes to build a new pipeline to bring an additional 50,000 acre-feet of water to San Antonio every year – a proposal that will draw down aquifers in more than 20 Central Texas counties.

Language in the abridged application that attempts to make the case for why the Vista Ridge project contributes to conservation is contradictory. On the one hand, the stated purpose of the Vista Ridge project is “to provide 50,000 AFY of a new, non-Edwards Aquifer water supply to meet SAWS’s needs arising from projected population growth . . . and to prospective regional entities to whom SAWS will wholesale water.” Yet, the applicant claims that the project will benefit conservation by “removing 50,000 acre-feet per year of water demand off the Edwards Aquifer.” Is the project a brand new supply to provide for new demand or is it intended to be a direct swap on current Edwards water use? Regardless, swapping pumping from one aquifer for pumping in another aquifer, without any reduction in overall water use or increase in efficiency or reuse, is not conservation as defined by the Texas Water Code.

While it is true that SAWS has been a leader in conservation, ironically, the Vista Ridge project would reverse this record and encourage water waste over water conservation, since the project requires San Antonio to pay for as much water as is delivered, up to 50,000 acre-feet, regardless of whether the demand exists. For these reasons, we encourage the board to award the Vista Ridge project no points for its effects on conservation.

Funding the Vista Ridge project would divert money from projects that qualify and better deserve SWIFT funding. The two Vista Ridge project applications together amount to over \$1 billion total requested, which makes up nearly half of the total \$2.34 billion requested by all 40 applicants for the 2016 round of SWIFT funding, many of which are proposing real conservation and reuse strategies. The Vista Ridge project is very expensive, partly because of the risk assumed by and the return on investment guaranteed to the private Project Company under the public-private partnership. It is unfair to divert such significant funding from other worthwhile public projects, to help fund a project that was intended to be funded in the private markets, with the risks, benefits, and costs borne by the private, for-profit Abengoa company.

3. The Vista Ridge project should not be funded through conservation funds.

The Texas Water Code requires that, of the money disbursed from SWIFT between each five-year State Water Plan cycle, the Board must apply at least 20 percent of that funding toward projects “that are designed for water conservation or reuse.” Tex. Water Code § 15.434(b). This provision ensures that a significant number of conservation and reuse projects are funded through the SWIFT program. As explained above, the Vista Ridge

project is not a conservation project. Because the amount requested for Vista Ridge makes up approximately 43 percent of all SWIFT funding requested, classifying Vista Ridge as a water conservation project would contravene the intent of state law. If the Vista Ridge project is a “conservation” project, then every dam and every other water development project can be classified as a “conservation” project. That is not what the Legislature intended. SWIFT funds earmarked for “conservation” must go towards projects that reduce consumption of water and eliminate waste, not increase water supply or simply substitute one source of water for another source.

We urge you to prioritize those projects that involve advanced metering infrastructure, municipal conservation and water loss reduction, and reclaimed and reuse projects, and deny SWIFT funding to the Vista Ridge project.

Thank you for considering these comments.

Sincerely,

Clean Water Action

Environment Texas

Environmental Stewardship

Save Our Springs Alliance