

TO: San Antonio Water System Board of Trustees

FROM: Nancy Belinsky, Vice President and General Counsel and Donovan Burton, Vice President of Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVAL OF PAYMENT TO THE POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT AND A RESOLUTION AGREEMENT IN CONNECTION WITH DISCHARGES FROM THE AQUA VISTA AND BITTERS PUMP STATIONS

Board Action Date: April 6, 2021

**SUMMARY AND RECOMMENDATION:**

The attached resolution approves a payment to the Post Oak Savannah Groundwater Conservation District (the “District”) and a related Resolution Agreement (the “Agreement”) between the District, Blue Water Vista Ridge, LLC (“Blue Water”) and Vista Ridge, LLC (“Vista Ridge”) in which the San Antonio Water System (the “System”) is not a signatory but a third-party beneficiary of the Agreement. The Agreement relates to an informal dispute that arose with the District after the System discharged water from the Aqua Vista and Bitters pump stations during start-up and integration of water from the Vista Ridge project (the “Discharge”).

- In April of 2020, the System discharged water from its Aqua Vista and Bitters pump stations in connection with the safe, planned, and measured start-up and integration of water from the Vista Ridge project.
- District alleged that the Discharge may have been undertaken in a manner that was not a beneficial use of the water and potentially constituted waste. The District further alleged that Blue Water and Vista Ridge may have violated the terms of the applicable District groundwater permits, the District’s rules and the Texas Water Code by failing to ensure that the delivered water was put to a beneficial use and not wasted.
- The System denies that it violated any of the Rules, or the Texas Water Code, or that any water discharged was not beneficially used, or that the Discharge constituted waste.
- To avoid further dispute and expense concerning the Discharge, the System, the District, Blue Water, and Vista Ridge have agreed to resolve all claims related to the Discharge pursuant to a payment from the System, Blue Water and Vista Ridge to the District and pursuant to the terms of a Resolution Agreement between the District, Blue Water and Vista Ridge that is attached to the resolution as Attachment No. 1 (the “Resolution Agreement”). Pursuant to the terms of the Resolution Agreement, the System will pay to

the District the sum of \$75,000.00, all of which will be paid directly to the District to be used exclusively by the District for its Groundwater Well Assistance Fund.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The System will pay \$75,000.00 to the District. Funds will be paid from the System Fund, 2021 O&M budget (Company: 1000; Accounting Unit: 8111100; Account: 511510).

**RESOLUTION NO.**

**OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A PAYMENT TO THE POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT AND A RESOLUTION AGREEMENT IN CONNECTION WITH DISCHARGES FROM THE AQUA VISTA AND BITTERS PUMP STATIONS; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE ALL DOCUMENTS AND TAKE ALL ACTIONS NECESSARY TO IMPLEMENT RESOLUTION OF THE DISPUTE; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the Vista Ridge Regional Supply Project (the “Project”) transmits water from a well field in Burleson County, Texas, through a collection system to a high service pump station, then through a 142-mile pipeline to the point of delivery to the San Antonio Water System (the “System”) in northern Bexar County, Texas (the “Agua Vista Site”); and

**WHEREAS**, beginning on April 15, 2020, Vista Ridge, LLC (“Vista Ridge”) produced and transported groundwater from an area within Burleson County pursuant to various permits issued to Vista Ridge by the Post Oak Savannah Groundwater Conservation District (the “District”) to the Agua Vista Site at which Vista Ridge sold and delivered the water to the System, and the System purchased the water from Vista Ridge and became the owner of the water; and

**WHEREAS**, the District has alleged that the System, Vista Ridge and/or Blue Water Vista Ridge, LLC, (“Blue Water”), the Permit Administrator, violated the Rules of the District (“Rules”) and the Texas Water Code by discharging water at the Agua Vista site and at Bitters pump station during start-up and integration of the water into the System’s infrastructure (the “Discharge”); and

**WHEREAS**, the District has alleged that the Discharge was undertaken in a manner that was not a beneficial use of the water and constituted waste; and

**WHEREAS**, the District has alleged that Blue Water and Vista Ridge violated the terms of the drilling and operating permit and the transport permit issued by the District, the Rules and the Texas Water Code by failing to ensure that the delivered water was put to a beneficial use and not wasted; and

**WHEREAS**, at this time, the District has not issued any notices of violation to the System, Vista Ridge, or Blue Water nor has the District assessed any administrative fines or

penalties of any kind against the System, Vista Ridge or Blue Water in relation to the Discharge; and

**WHEREAS**, the System denies that it violated any of the Rules, or the Texas Water Code, or that any water discharged was not beneficially used, or that the Discharge constituted waste, and the System denies that the District has jurisdiction over the System or that the Rules apply to the System' operations in Bexar County, Texas; and

**WHEREAS**, the System, the District, Blue Water, and Vista Ridge, have agreed to resolve all claims related to the Discharge pursuant to a payment from the System, Blue Water and Vista Ridge to the District and pursuant to the terms of a Resolution Agreement among the District, Blue Water and Vista Ridge that is attached to this resolution as Attachment No. 1 (the "Resolution Agreement"); and

**WHEREAS**, the System will not be a signatory of the Resolution Agreement but will be a third-party beneficiary of the Resolution Agreement; and

**WHEREAS**, pursuant to the terms of the Resolution Agreement, the System will pay to the District the sum of \$75,000.00 (the "Payment"), all of which will be paid directly to the District to be used exclusively by the District for its Groundwater Well Assistance Fund; and

**WHEREAS**, the San Antonio Water System Board of Trustees desires (i) to approve the Payment to the District, (ii) to approve the Resolution Agreement, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute all documents and to take all actions necessary to implement the resolution of the dispute regarding the Discharge; now, therefore:

**BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:**

1. That the Payment to the District is hereby approved.
2. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute all documents and to take all actions that are reasonable or necessary to implement the resolution of the dispute with the District regarding the Discharge.
3. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.
4. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

5. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 6th day of April, 2021.

\_\_\_\_\_  
Jelyne LeBlanc Burley, Chairwomen

ATTEST:

\_\_\_\_\_  
Eduardo Parra, Secretary

Attachment 1 – Resolution Agreement

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## FULL AND FINAL RESOLUTION AGREEMENT

THIS FULL AND FINAL RESOLUTION AGREEMENT (“Agreement”) is entered into by and between Vista Ridge LLC (“Vista Ridge”), a Delaware limited liability company, Blue Water Vista Ridge, LLC (“Blue Water”), a Texas limited liability company, and the Post Oak Savannah Groundwater Conservation District (“POSGCD”), a groundwater conservation district created pursuant to *Acts 2001, 77<sup>th</sup> Legislature, R.S., Chapter 1307, 2001 Texas General Laws (HB 1784)* and the provisions of *Chapter 36, Texas Water Code*.

WHEREAS, pursuant to the legal authorities contained in HB 1784 and Chapter 36, Texas Water Code, and specifically Section 36.0015 of such Code, POSGCD was established in order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater by, inter alia, managing the production and use of groundwater located within Burleson and Milam Counties, Texas;

WHEREAS, Vista Ridge, formerly known as Agua Vista Ridge, LLC, has entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (“WTPA”) with San Antonio Water System (“SAWS”);

WHEREAS, the Vista Ridge Regional Supply Project (“Project”) transmits water from a well field in Burleson County, Texas, through a collection system to a high service pump station, thence through a 142-mile pipeline to the point of delivery to SAWS in northern Bexar County, Texas;

WHEREAS, POSGCD issued an Amended and Restated Drilling & Operating Permit to Vista Ridge dated April 18, 2017 (“Operating Permit”) for the Project;

WHEREAS, POSGCD issued an Amended and Restated Transport Permit to Vista Ridge dated April 18, 2017 (“Transport Permit”) for the Project;

WHEREAS, Blue Water is the Permits Administrator related to the Operating Permit and Transport Permit held by Vista Ridge;

WHEREAS, Central Texas Regional Water Supply Corporation (“CTRWSC”) is a Texas nonprofit water supply corporation responsible for construction and ownership of certain Project facilities pursuant to an Amended and Restated Water Transportation Agreement (“WTA”). Under the WTA, CTRWSC transports Project water to SAWS on behalf of Vista Ridge. Vista Ridge owns Project water in transit until it is delivered to SAWS;

WHEREAS, EPCOR Services Inc. (“EPCOR”) is the operator of the Project facilities and in such role oversees the transmission of Project water from the well field to the point of delivery to SAWS;

WHEREAS, beginning on April 15, 2020, Vista Ridge produced groundwater from an area within Burleson County pursuant to the Operating Permit and transported the water to the Agua Vista site in Bexar County, Texas pursuant to the Transport Permit, at which location Vista Ridge sold and delivered the water to SAWS, and SAWS purchased the water from Vista Ridge and became the owner of the water;

WHEREAS, POSGCD has alleged that SAWS, Vista Ridge and/or Blue Water violated the Rules of the Post Oak Savannah Groundwater Conservation District (“Rules”) and the Texas Water Code by discharging water at the Agua Vista site and at Bitters pump station during start-up and integration of the water into the SAWS system (the “Discharge”);

WHEREAS, POSGCD has alleged that the Discharge was undertaken in a manner that was not a beneficial use of the water and constituted waste;

WHEREAS, POSGCD has alleged that Blue Water and Vista Ridge violated the terms of the Operating Permit and Transport Permit, the Rules and the Texas Water Code by failing to ensure that the delivered water was put to a beneficial use and not wasted;

WHEREAS, at this time, POSGCD has not issued any notices of violation to SAWS, Vista Ridge, or Blue Water nor has POSGCD assessed any administrative fines or penalties of any kind against SAWS, Vista Ridge or Blue Water in relation to the Discharge;

WHEREAS, SAWS denies that it violated any of the Rules, or the Texas Water Code, or that any water discharged was not beneficially used, or that the Discharge constituted waste, and SAWS denies that POSGCD has jurisdiction over SAWS or that the Rules apply to SAWS’ operations in Bexar County, Texas;

WHEREAS, Vista Ridge denies it violated any of the terms of the Operating Permit, Transport Permit, Rules, or the Texas Water Code, or that any water discharged was not beneficially used, or that it committed or allowed waste;

WHEREAS, Blue Water denies that it violated any of the terms of the Operating Permit, Transport Permit, Rules or the Texas Water Code, or that any water discharged was not beneficially used, or that it committed or allowed waste; and

WHEREAS, to avoid further dispute and litigation, administrative proceedings or expense, Vista Ridge, Blue Water, and POSGCD have agreed to resolve and settle all the claims and allegations made by POSGCD against SAWS, Vista Ridge, and Blue Water.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Agreement, Vista Ridge, Blue Water, and POSGCD agree as follows (Vista Ridge, Blue Water, and POSGCD may be referred to individually as a “Party,” or collectively as the “Parties”):

1. POSGCD shall be paid the sum of \$105,000.00 U.S.D., together with a \$1,000.00 U.S.D. Administrative Fee (together constituting the “Payment”) within 15 days after the Effective Date. POSGCD has determined that it shall use the entirety of such Payment, less the Administrative Fee, exclusively for the POSGCD’s Groundwater Well Assistance Program and the items allowed thereunder.
2. The Payment does not constitute and shall not be characterized in any formal action or statement by any Party in any court, administrative action, legal proceeding, or other public forum as payment of a penalty, fine, or judgment, or payment in settlement of an enforcement action or litigation of any kind against SAWS, Vista Ridge or Blue Water.

3. Vista Ridge shall gather and within thirty (30) days provide information as set out in the document entitled "Information for District's Dashboard," attached hereto as "Exhibit A" and incorporated herein, to wit: water use, quarterly inspections, permitted water amounts received and transported from District, conservation, spill prevention and mitigation measures undertaken by various entities handling or receiving such water and its use, and reports filed with Texas Water Development Board and/or Texas Commission on Environmental Quality. Such Exhibit A shall be reviewed and may be modified annually between POSGCD and Vista Ridge.
4. Upon the execution of this Agreement by the Parties and receipt by POSGCD of the Payment pursuant to paragraph 1 of this Agreement, POSGCD forever releases, acquits and discharges Blue Water, Vista Ridge, as well as third party beneficiaries (SAWS, CTRWSC, EPCOR), and each of their respective agents, officers, partners, members, affiliates, employees, attorneys, owners, creditors that provided financing for the Project, guarantors, trustees, representatives, successors and assigns (each a "Released Party" and collectively the "Released Parties") from any and all claims for injunctive or mandatory relief, and from any and all claims for the recovery of fines or civil penalties, and from any and all claims, demands, liabilities, causes of action, damages, liquidated damages, costs, attorney's fees, and costs and expenses of whatsoever kind or nature, at law or in equity, known or unknown, as of the Effective Date that POSGCD had, now has, or may have in the future against one or more of the Released Parties that are related to or arise directly from the Discharge.
5. Upon the effectiveness of the release set forth in paragraph 4 of this Agreement, each of Vista Ridge and Blue Water forever releases, acquits and discharges POSGCD and its agents, officers, directors, employees, attorneys, representatives, successors and assigns from any and all claims for injunctive or mandatory relief, and from any and all claims for the recovery of fines or civil penalties, and from any and all claims, demands, liabilities, causes of action, damages, liquidated damages, costs, attorney's fees, and costs and expenses of whatsoever kind or nature, at law or in equity, known or unknown, as of the Effective Date that either Vista Ridge or Blue Water had, now has, or may have in the future against POSGCD that are related to or arise directly from the Discharge.
6. Each Party agrees that it shall pay its own costs, fees, expenses, and attorneys' fees incurred in connection with this Agreement, or in connection with any of the claims released and discharged in the preceding paragraphs 4 or 5 of this Agreement.
7. This Agreement represents the complete and final resolution and settlement of disputed claims between POSGCD and the Released Parties, subject to the continuing obligation of Vista Ridge to provide the Information for District's Dashboard pursuant to paragraph 3. This Agreement may not be construed in any court, administrative action, or legal proceeding as an admission, direct or indirect, of liability, other than as expressly set forth in this Agreement.
8. The terms, conditions and agreements contained in this Agreement shall be binding upon, and the benefits and advantages of the same shall inure to POSGCD and all



Released Parties and their respective successors and assigns. Each of the Parties acknowledges, understands and agrees that the agreements and representations contained in this Agreement were made to induce the other Parties to enter into and sign this Agreement. The terms, provisions, agreements and representations made or contained in this Agreement are contractual and are not mere recitals, and the same will survive perpetually following the execution of this Agreement.

9. This Agreement may be extended, revised, waived, discharged, released, modified, terminated, or otherwise amended only by a written instrument executed by the Party against whom enforcement of such amendment is asserted.
10. This Agreement contains the final agreement between the Parties relating to the compromise and settlement of all matters described in the Agreement. All prior agreements, if any, related to the subject matter of this Agreement are terminated and are of no force or effect.
11. The Parties represent each to the other that they, and their duly authorized representatives have read this Agreement and understand it, that they have executed this Agreement with the intent to be fully bound according to its terms; that in signing this Agreement they have relied solely on their own knowledge, or their duly authorized representative's knowledge and judgment and not the advice of their own attorneys and not in reliance upon any representation, advice, statement, or action of any kind of any other Party or any other Party's representatives, or attorneys, except to the extent that such representations, statements, or actions are expressly set forth in this Agreement. The Parties expressly disclaim reliance on any fact, or representation made by any other Party, or any other Party's representatives, or attorneys that is not expressly contained in this Agreement.
12. The construction, interpretation and validity of this Agreement shall be governed by the laws of the State of Texas. Venue of any legal action arising out of this Agreement shall lie exclusively in Milam or Burleson Counties, Texas.
13. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation is held invalid or unenforceable, such provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement, and all other applications of any such provision, will not be affected thereby.
14. No Party may assign this Agreement without the prior written consent of the other Parties.
15. This Agreement will be executed in three (3) identical counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed to constitute one and the same Agreement. Any of the Parties may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile, or electronic mail transmission shall be as effective as delivery of a manually

executed counterpart. A facsimile or “.pdf” signature shall be deemed to constitute an original signature for purposes of this Agreement.

16. Each person signing this Agreement for or on behalf of a Party to this Agreement represents and warrants to the other Parties that the person signing is authorized to execute this Agreement for and on behalf of the Party for whom this Agreement is executed.
17. Each Party to this Agreement agrees and acknowledges that SAWS has paid a portion of the Payment, and, while SAWS is not a signatory to this Agreement, SAWS is an intended third party beneficiary of all of the rights, benefits and provisions of the Agreement with express right to enforce the Agreement, and each Party expressly waives any right to assert a defense related or similar to lack of privity of contract with SAWS. In addition, while CTRWSC and EPCOR are not signatories to this Agreement, they are intended third party beneficiaries of certain provisions in which they are expressly named, have express rights to enforce the Agreement, and each Party expressly waives any right to assert a defense related or similar to lack of privity of contract with CTRWSC or EPCOR.
18. In the event that this Agreement, or any provision hereof, is construed or determined to be ambiguous by a court of law, then in that event, the Parties agree that each Party has contributed to the preparation of this Agreement, and that they have jointly written or composed this Agreement, and that no Party shall be given any advantage over the other Parties under the laws of construction of instruments based upon the authorship of this Agreement.

Agreed to, executed and effective as of the date of the last signature by a Party below (the “Effective Date”).

*[Signature Pages to Follow]*

**VISTA RIDGE LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Michael Albrecht  
Authorized Signatory

Date: \_\_\_\_\_

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**BLUE WATER VISTA RIDGE, LLC**  
a Texas limited liability company

By: \_\_\_\_\_  
Ross M. Cummings  
President

Date: \_\_\_\_\_

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**POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Sidney Youngblood, Chairman

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Tommy Tietgen, Secretary

Date: \_\_\_\_\_

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## EXHIBIT A

### **POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT INFORMATION FOR DISTRICT'S DASHBOARD DEMONSTRATING WATER USE, QUARTERLY INSPECTIONS, PERMITTED WATER AMOUNTS RECEIVED AND TRANSPORTED FROM DISTRICT, CONSERVATION, SPILL PREVENTION AND MITIGATION MEASURES UNDERTAKEN AND REPORTS FILED WITH TWDB AND/OR TCEQ**

**Shall be reviewed on an annual basis to ensure that these Actions meet the District's purposes.**

Vista Ridge:

1. A checklist of items to comply with applicable District Rules, along with proof of verification of each, has been developed and shall be submitted monthly to the District.
2. Well driller records, field data, and any mitigation efforts from well drillers that have not already been submitted to POSGCD will be provided. Going forward, such information will be provided within thirty (30) days after well completion.
3. The District shall be provided TWDB Annual Water Use Survey, quarterly inspection reports and/or any additional reports filed with state agencies by SAWS or EPCOR. Vista Ridge will either provide a link to such Water Use Survey, quarterly inspection report and any other reports, provide them directly or have EPCOR provide them reports.
4. Timely and transparent communication, including relay of information received from the ultimate user or EPCOR of any and all operations, discharges and/or sales of water in the future that involve any groundwater that is under permit from the District.

EPCOR:

1. Detailed reports of amounts of water received from VR and total amounts delivered to existing designated receivers shall be received by the District monthly. Initial data dump shall be provided by April 30, 2021.
2. The District shall be provided a copy of the Vista Ridge project's Emergency Response Plan that covers spill prevention and mitigation protocols. The EPA certificate of compliance is submitted with this submittal.
3. The District shall be provided documentation establishing that the Vista Ridge project and/or EPCOR have registered the Vista Ridge project with 811.
4. The District shall be provided a detailed report concerning the beneficial use of the amounts of water transmitted, received, discharged under the parameters of TCEQ's Hydrostatic Test General Permit No. TXG670000 or its individual equivalent, are unaccounted for or which such amounts are not delivered to the designated receivers.
4. The District shall be provided TWDB Annual Water Use Survey, quarterly inspection reports and/or any additional reports filed with state agencies by SAWS or EPCOR.