

PETITIONER END OP, L.P.'S APPEAL CHALLENGING THE  
DESIRED FUTURE CONDITIONS ADOPTED BY THE DISTRICTS IN  
GROUNDWATER MANAGEMENT AREA 12

JUL 11 2011

**TO THE EXECUTIVE ADMINISTRATOR:**

1. End Op, L.P. ("Petitioner") files this appeal pursuant to Texas Water Code §36.108(l) – (o) and Title 31 Texas Administrative Code Chapter 356, Subchapter D. Petitioner files this appeal to challenge the reasonableness of the desired future conditions (the "DFC") approved by the districts ("Districts") in groundwater management area 12 ("GMA 12") for the Sparta, Queen City, Carrizo-Wilcox, Calvert Bluff, Simsboro, and Hooper Aquifers. Petitioner seeks a finding that the DFC is not reasonable and a recommendation that the Districts revise the DFC as provided herein. In support thereof Petitioner shows the following:

**A. Preliminary Matters**

2. The Districts adopted the DFC for the Sparta, Queen City, Carrizo-Wilcox, Calvert Bluff, Simsboro, and Hooper Aquifers, among others, on August 11, 2010 by resolution.

3. The deadline to file an appeal with the Texas Water Development Board ("Board") challenging the DFC is August 11, 2011.

4. Petitioner provided the Districts with a copy of this Petition and supporting evidence on June 11, 2011, at least thirty days prior to the filing of this Petition with the Board.

5. The substantive issues raised in the Petition have not been previously reviewed by the Board.

**B. Petitioner Has a Legally Defined Interest in Groundwater in GMA 12**

6. Petitioner leases groundwater rights covering over 17,000 acres of land in Lee and Bastrop Counties. Lee and Bastrop Counties are within Lost Pines Groundwater Conservation District (“LPGCD”) and GMA 12. On July 25, 2007, Petitioner filed 14 permit applications with LPGCD seeking permits for 14 wells that would be located on the land leased in Lee and Bastrop Counties. If granted, the 14 permits would grant Petitioner the right to withdraw up to 56,000 acre-feet of groundwater per year from Well Nos. 1-14 located in Lee and Bastrop Counties and wholly within the Simsboro Aquifer. In 2008, Petitioner purchased the real property upon which Well No. 10 is located and subsequently drilled a test well on Well No. 10 after receiving LPGCD’s approval.

7. Petitioner’s ownership information is reflected in Exhibit 6 (6-A through 6-C). Petitioner, therefore, has a legally defined interest in groundwater in GMA 12.

**C. Summary of Evidence that the DFC is Not Reasonable**

8. The Districts adopted a DFC for each aquifer in GMA 12. Petitioner’s grounds for challenging the reasonableness of the DFC apply to all aquifers in GMA 12. Petitioner challenges the reasonableness of the DFC on the following grounds:

- a. **The DFC is unreasonable because the DFC process did not adequately involve stakeholders and GMA 12 did not present timely and sufficient opportunities for stakeholder review and comment.** Much of the technical work was only presented during non-public meetings. The results of the non-public meetings were later presented in the public meetings, but only after the decisions had been made. The development of the well file submitted to the Board does not reflect input from district constituents. When requests for materials used in the development of the well file were made, responses were obtuse.
- b. **The DFC is unreasonable because it is based on an average drawdown that is too vague, ambiguous and inherently arbitrary to be an effective management goal.** GMA 12 created numerous well files to simulate various pumping scenarios; however, the locations of pumping in the well files were not

typically changed. Variations in the model results are determined by each well file and each well file is a predetermined estimate of the location, rate, and timing of production. Thus, the Districts have essentially pre-approved and pre-denied permits based on their selection of pumping locations.

- c. **The DFC is unreasonable because the method of reverse engineering is arbitrary and has no bearing on the “health” of the aquifer.** Most of the Districts in GMA 12 did not identify the reason for the chosen DFC. The well file reflects permitted amounts within the Districts and the DFC is defined from model results returned based on the production input; that is, the well file defines the adopted DFC of the Districts, not the hydraulics of the aquifers. The hydraulics of the aquifers in GMA 12 indicate that a vastly greater amount of water is available than the production amounts prescribed in the well file by the Districts, which were established to create a restrictive DFC.
- d. **The DFC is unreasonable because it cannot be satisfactorily measured in the field.** There are currently few wells located in the deeper downdip portions of the Simsboro Aquifer. However, the DFC is based on average drawdown across the entire extent of the aquifer as simulated in the GAM. The monitoring wells used to prove the accuracy of the GAM do not exist. Until the millions of dollars necessary to install monitoring wells is spent, permits will be denied based on the production prescribed by the Districts in the well file used to define the DFC. With regard to the Simsboro Aquifer, Petitioner drilled a test well on Well No. 10 and provided LPGCD with a copy of the test well report and data in April 2009. GMA 12 did not use this information in establishing the DFC for the Simsboro Aquifer.
- e. **The adopted DFC negatively impacts private property rights.** Petitioner represents many landowners in Lee and Bastrop counties whose ability and right to produce groundwater will be denied because of the method used to establish the DFC. Petitioner itself also owns a portion of the land from which groundwater would be produced. Petitioner has invested millions of dollars in a Simsboro groundwater project with the legitimate expectation of being able to exercise Petitioner’s right and the rights of landowners it represents to withdraw groundwater. The ramifications of the unreasonable DFC are already injuring Petitioner and other landowners Petitioner represents and will continue until a reasonable DFC is established. The general manager of one of the Districts in GMA 12 is regularly quoted in local newspapers stating and alluding that his District is “out of water”, and that the aquifer will be harmed if “water marketers” are granted permits. The mischaracterization that the District is out of water when there are millions of acre-feet of water in storage is extremely inaccurate and relies on an unreasonable DFC based on pre-determined pumping amounts and locations.

- f. **The DFC is unreasonable because it does not allow for a reasonable and prudent development of the State's ground-water resources.** The South Central Texas Regional Water Plan for 2001 and 2006 both show that 75,000 acre-feet per year of water is available from the Simsboro Aquifer. Also, testing of the deep Simsboro Aquifer by Petitioner demonstrated the highly productive nature of the aquifer. The adopted DFC ignores the best available information and would unreasonably preclude development of the available groundwater resources in GMA 12.
- g. **The DFC is not reasonable because it conflicts with the State's policy of encouraging economic development.** By prescribing the amount of production to determine the DFC, the Districts created an artificial shortage of water that will be used to limit future development. This restriction on development will have an adverse effect on creating new jobs, businesses and tax base for GMA 12 and the State.
- h. **The DFC is not reasonable because of the adverse socio-economic impacts that are reasonably expected to occur as a result of attempting to implement it as a management goal.** The 2007 State Water Plan states that water user groups within Region K and Region L will need nearly 1,000,000 acre-feet of water supplies by 2060 (557,331 acre-feet and 416,859 acre-feet, respectively). In both regions half or more (277,674 acre-feet in Region K and 300,327 acre-feet in Region L) of the need in 2060 will be for municipal use based on population projections. The DFC restricts the utilization of a prolific source of high quality water that is ideal for municipal use and it may adversely affect the progression of economic development in the regions and State.

**D. Petitioner's Evidence for a Hearing**

- Exhibit 1. GMA 12 DFC Submittal Packet dated August 12, 2010
- Exhibit 2. TWDB Draft Report GAM Run 10-044 MAG dated Nov. 23, 2010 (Oliver)
- Exhibit 3. TWDB GAM Run 10-024: Model Report dated July 16, 2010 (Wade)
- Exhibit 4. Groundwater Availability Models for the Queen City and Sparta Aquifers found at - [http://www.twdb.state.tx.us/Gam/qc\\_sp/qc\\_sp.asp](http://www.twdb.state.tx.us/Gam/qc_sp/qc_sp.asp)
- Exhibit 5. Groundwater Availability Model for the Central Part of the Carrizo-Wilcox Aquifer in Texas found at: [http://www.twdb.state.tx.us/gam/czwx\\_c/czwx\\_c.asp](http://www.twdb.state.tx.us/gam/czwx_c/czwx_c.asp)

- Exhibit 6. Petitioner's Applications and related land and well information
  - 6-A: Introduction
  - 6-B: Well Drilling Applications, Well Nos. 1-14
  - 6-C: Land Owner Authorizations
- Exhibit 7. Report from Petitioner's hydrogeologist, Thornhill Group, Inc., dated April 15, 2009
- Exhibit 8. Data including map supporting Report from Petitioner's hydrogeologist, Thornhill Group, Inc., dated April 15, 2009
- Exhibit 9. Presentation by Thornhill Group, Inc. made on behalf of End Op, L.P. to LPGCD on February 17, 2010
- Exhibit 10. Presentation by Thornhill Group, Inc. to GMA 12 on Aug. 28, 2008
- Exhibit 11. Letter dated May 11, 2010 from Robert S. Kier Consulting to Michael R. Keester at Thornhill Group, Inc.
- Exhibit 12. Letter dated May 24, 2010 from Robert S. Kier Consulting to Michael Thornhill of Thornhill Group, Inc.
- Exhibit 13. Letter dated May 26, 2010 from End Op to GMA 12 regarding DFCs
- Exhibit 14. Letter dated Sept. 13, 2010 from Thornhill Group, Inc. to Ms. Katie Kaighin at Robert S. Kier Consulting
- Exhibit 15. LPGCD Minutes & Agenda from Board of Directors Meeting on Sept. 17, 2008
- Exhibit 16. LPGCD's DFC statement dated June 24, 2009
- Exhibit 17. LPGCD's DFC statement dated May 26, 2010
- Exhibit 18. TWDB Presentation by Bill Hutchinson to LPGCD on Nov. 18, 2009
- Exhibit 19. Bureau of Economic Geology, Report of Investigations No. 256 (Dutton)
- Exhibit 20. Excerpt 4C.13 from 2006 South Central Texas Regional Water Plan Vol. II-June 2005
- Exhibit 21. LPGCD 2010 Rules
- Exhibit 22. 31 T.A.C. Chapter 356, Subchapter A, C, D

- Exhibit 23. Texas Water Code Chapter 36
- Exhibit 24. LPGCD Management Plan
- Exhibit 25. 2007 State Water Plan found at  
<http://www.twdb.state.tx.us/wrpi/swp/swp.asp>
- Exhibit 26. 2011 Region G Water Plan found at:  
[http://www.twdb.state.tx.us/wrpi/rwp/3rdRound/2011\\_RWP/RegionG/](http://www.twdb.state.tx.us/wrpi/rwp/3rdRound/2011_RWP/RegionG/)
- Exhibit 27. 2011 Region K Water Plan found at:  
[http://www.twdb.state.tx.us/wrpi/rwp/3rdRound/2011\\_RWP/RegionK/](http://www.twdb.state.tx.us/wrpi/rwp/3rdRound/2011_RWP/RegionK/)
- Exhibit 28. 2011 Region L Water Plan found at:  
[http://www.twdb.state.tx.us/wrpi/rwp/3rdRound/2011\\_RWP/RegionL/](http://www.twdb.state.tx.us/wrpi/rwp/3rdRound/2011_RWP/RegionL/)
- Exhibit 29. TWDB Draft Report GAM Run 10-045 MAG dated Nov. 29, 2010  
(Oliver)
- Exhibit 30. TWDB Draft Report GAM Run 10-046 MAG dated Nov. 29, 2010  
(Oliver)
- Exhibit 31. Proof of Delivery of Petition to GMA 12 Districts – to be provided

Petitioner reserves the right to present additional evidence in response to assertions or issues raised during a hearing.

**E. Petitioner Information**

End Op, L.P.  
P.O. Box 581  
Elgin, Texas 78621  
512-285-5388  
[endop@att.net](mailto:endop@att.net)

An affidavit attesting to the truth of the matters contained in this Petition is attached.  
Petitioner hereby authorizes the representatives identified below to act for and on behalf of  
Petitioner in this matter to the fullest extent and nature.

**Petitioner Representative Information**

Russell S. Johnson  
Stacey V. Reese  
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512-495-6074  
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Respectfully submitted,

Duration Water, L.L.C.  
General Partner of End Op, L.P.

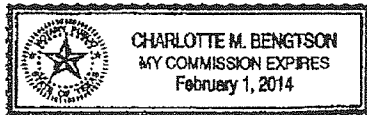
By: Frankie Limmer

Frankie Limmer  
Manager of Duration Water, L.L.C.

STATE OF TEXAS §  
COUNTY OF Bastrop §

Before me, the undersigned, on this day personally appeared Frankie Limmer, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of this office this 8<sup>th</sup> day of July, 2011.



Charlotte M. Bengtson  
Notary Public's Signature

VERIFICATION

STATE OF TEXAS §

Bastrop COUNTY §

Before me, the undersigned notary, on this day personally appeared Frankie Limmer, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

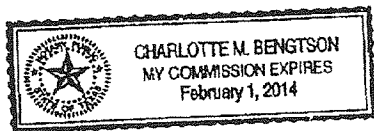
"My name is Frankie Limmer. I am Manager of Duration Water, L.L.C., the General Partner of End Op, L.P. End Op, L.P. has groundwater leases covering over 17,000 acres of land in Lee and Bastrop Counties and has 14 permit applications pending before the Lost Pines Groundwater Conservation District. I am capable of making this verification. I have read the 'Petitioner End Op, L.P.'s Appeal Challenging the Desired Future Conditions Adopted by the Districts in Groundwater Management Area 12.' The facts stated in it are within my personal knowledge and are true and correct."

Duration Water, L.L.C.  
General Partner of End Op, L.P.

By: Frankie Limmer

Frankie Limmer  
Manager of Duration Water, L.L.C.

Sworn to and subscribed before me by Frankie Limmer on the 8<sup>th</sup> day of July, 2011.



Charlotte M. Bengtson  
Notary Public in and for the State of Texas

My commission  
Expires: Feb-1, 2014