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VIA EMAIL

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

Re: Groundwater Management Area 12 Desired Future Conditions

Dear Groundwater Management Area No. 12 Representatives:

Recharge Water, LP (“Recharge”) is one of the largest groundwater rights owners and permit holders in Groundwater Management Area 12 (“GMA 12”) and, as such, has a significant interest in the development of the Desired Future Conditions (“DFCs”). Recharge hereby submits these comments for inclusion in the administrative record for this GMA 12 DFC planning cycle and hereby provides notice of the same to each of the groundwater conservation districts within GMA 12.

As addressed in its previously submitted comments, Recharge has grown increasingly concerned that the Legislature’s critical statutory mandates governing DFC development are being ignored to the detriment of Recharge, the retail public utilities that rely on Recharge for their wholesale water supply—and ultimately the homes and businesses those utilities serve. The Legislature has clearly and unequivocally mandated that GMA 12 (and all other GMAs throughout the state) consider the “***highest practicable level of groundwater production***” in developing the DFCs. Yet, despite the Texas Water Development Board’s (“TWDB”) well-documented reports on the abundance of Carrizo-Wilcox groundwater available for the production within GMA 12, this legislative directive has been effectively ignored.

Specifically, the consistent position expressed by the majority of GMA 12 representatives has been to maintain the existing Simsboro DFC unchanged. However, that decision is not grounded in a determination of the highest practicable level of groundwater production, a balanced evaluation of the nine statutory factors, or a transparent application of the best available science. Instead, the record reflects a policy-driven objective to reach a predetermined outcome, with subsequent modeling efforts adjusted to conform to that objective.

In other words, rather than the DFC being derived from modeling the highest practicable level of groundwater production, GMA 12 has manipulated its modeling to produce a predetermined DFC. Equally concerning is that, to achieve this predetermined DFC outcome, the pumping files used to inform the modeling process have been manipulated to artificially reduce groundwater production. As addressed in more detail below, these efforts do not reflect

meaningful consideration of the nine statutory factors, nor have they directly and publicly addressed that they do not provide adequate water to meet the known needs of stakeholders within GMA 12 much less account for growth.

Historical Development of the Simsboro DFC

The origins of the Simsboro DFC are critical to understanding the deficiencies in the current planning cycle. Specifically, during the first round of joint planning, GMAs were not required to consider the nine factors now codified in Texas Water Code Section 36.108(d). Nor were they required to “provide a balance between the *highest practicable level* of groundwater production and the conservation . . . of groundwater.”¹ Instead, during the first planning cycle, districts were required to consider the “uses or conditions of an aquifer” within the management area. As a result, the initial DFCs adopted were largely based on estimated pumping assumptions, without a clear, science-based justification for what the modeled average drawdown represented or why that level was appropriate within a given GMA.

In other words, the initial Simsboro DFC—expressed as an average drawdown of approximately 240 feet in Lost Pines Groundwater Conservation District (“LPGCD”)—was *not* derived from a rigorous, science-based evaluation of aquifer capacity or stakeholder needs. Rather, it was based on estimated pumping assumptions developed more than two decades ago. Although updates to the Groundwater Availability Model (“GAM”) and changes in modeling assumptions have significantly altered the relationship between pumping and drawdown, the DFC itself has remained effectively unchanged.

Notably, when the GAM was updated to better reflect aquifer characteristics—including increased transmissivity in the Simsboro layer—substantially greater modeled pumping was required to achieve the same level of drawdown confirming that prior assumptions *understated* the aquifer’s capacity to support production.

Fourth-Round DFC Development

In this fourth round of joint planning, the model duration has been extended to 70 years to evaluate projected reductions in artesian pressure through 2080. Notwithstanding this expanded modeling horizon, representatives of LPGCD have repeatedly stated during GMA 12 meetings in 2025 and 2026 that they intend to retain the existing 240-foot drawdown DFC for the Simsboro aquifer.

¹ The requirements set forth in Texas Water Code § 36.108(d) were enacted by the Legislature in 2011 through Senate Bill 660.

Maintaining the same DFC over an additional decade of projected pumping does not occur naturally—it requires manipulation of the underlying inputs. To mathematically preserve the same level of artesian pressure decline over a longer modeling period, LPGCD reduced total Simsboro pumpage in the adopted “S-19” model file by approximately 30% (referred to as “PS4-2”). Equally concerning, LPGCD singled out and disproportionately curtailed Recharge’s modeled production by nearly 60%—roughly double the average reduction arbitrarily applied to other permittees.

This raises a fundamental question: why has LPGCD selected a pumping file that assumes less than half of Recharge’s authorized production of 46,000 acre-feet per year from the Simsboro aquifer as the basis for DFC development? To date, LPGCD has identified no legal, scientific, or technical justification for this arbitrary reduction. Critically, Texas Water Code Chapter 36 mandates “fair, impartial, and nondiscriminatory” regulation.² Yet LPGCD has engineered a pumping file that not only arbitrarily curtails pumping of all permittees with no scientific justification but singles out Recharge’s production with a 60% reduction.

The only discernible function of these reductions is to reverse engineer a modeling scenario designed to preserve the 240-foot DFC, irrespective of actual aquifer conditions, meaningful consideration of total estimated recoverable storage, or the socioeconomic impacts associated with such reductions. This approach is not the product of a data-driven evaluation of the statutory factors; it is a reverse engineered exercise that substitutes predetermined policy preferences for the analysis required by law.

Finally, in addition to the manipulation of pumping assumptions to justify retaining the existing DFC which plainly does not account for growth or permitted production in GMA 12, GMA 12 has failed to provide clarity or transparency regarding the specific pumping file used to evaluate the nine statutory factors. To date, GMA 12 has referred interchangeably to multiple iterations—PS4-2, PS4-2 Mod, PS4-2 Mod v2, and most recently PS4-2 Mod v8—without identifying which version, if any, has been formally relied upon for purposes of the statutory analysis. Stakeholders cannot meaningfully evaluate the analysis, the underlying assumptions, or the resulting impacts on the proposed DFC when the operative modeling inputs remain in flux and undefined.

Recharge owns over ten thousand acres of groundwater rights in Lee and Bastrop Counties overlying the Carrizo-Wilcox Aquifer. Under settled Texas law dating back over a century, Recharge owns these groundwater rights as real property, and those vested property rights are both explicitly recognized in Texas Water Code Chapter 36 and protected by the United States and

² See TEX. WATER CODE § 36.122 (q).

Texas Constitutions.³ Restrictions placed on an owner's vested rights to produce groundwater can and have, resulted in a taking of private property requiring the payment of just compensation. *See Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118, 139-44 (Tex. App.—San Antonio 2013, pet. denied) (groundwater district's restriction of groundwater production resulted in a taking, requiring payment of just compensation).

Thus, Recharge urges GMA 12 to identify and rely upon a single, definitive pumping file and to transparently evaluate the nine statutory factors based on that file, as required by law, in order to adopt a DFC that reflects a balanced and lawful determination of the *highest practicable level of groundwater production*, which adequately accounts for the vested property right of Recharge and other permittees within GMA 12.

Sincerely,



Casey M. Cooper
TERRILL & WALDROP

cc: Liz Ferry, P.G., R. W. Harden & Associates, Inc.
Natasha Martin, LPGCD General Counsel
Greg Ellis, LPGCD Special Counsel and Mid East Texas GCD General Counsel
Kristen Fancher, Post Oak Savannah GCD General Counsel
Monique Norman, Brazos Valley GCD and Fayette County GCD General Counsel

³ TEX. WATER CODE § 36.002(a); *see also Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 833 (Tex. 2012) (“[g]roundwater rights are property rights subject to constitutional protection.”); *see also* U.S. CONST. amends. V & XIV; TEX. CONST. art. 1, § 17.