UW Brazos Valley Farm LLC

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By Email

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Re: GMA 12 Joint Planning

Groundwater Management Area 12 Members:

UW Brazos Valley Farm LLC ("UWBVF") submits these comments regarding the development of desired future conditions ("DFCs") in the GMA 12 joint planning process. UWBVF is a permitted groundwater producer in Robertson County, where it owns a large farm producing a range of crops. Over the past several years, UWBVF has worked with seven other local landowners (together, "Local Landowners") to permit groundwater production and transport from each of their respective privately-held land parcels, consistent with the Brazos Valley Groundwater Conservation District's ("BVGCD") rules, to help meet critical regional water supply needs.

UWBVF writes to express serious concern over the joint planning process that GMA 12 has used for the Simsboro Aquifer. It appears GMA 12 is not meaningfully working to meet its statutory duty to balance the highest practicable level of groundwater production with the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence for the management area, as required by Texas Water Code § 36.108(d-2). While GMA 12 has undoubtedly given lip service to the nine factors set forth in § 36.108(d), the Desired Future Condition that POSGCD and LPGCD advocate for the Simsboro Aquifer, and seek to impose across GMA 12, does not reflect meaningful consideration of the key and mandatory statutory factors.

Where landowners with <u>private property</u> interests <u>want to and can</u> (factor 7) access a <u>substantial available water resource</u> (factor 3) to meet <u>critical regional needs</u> (factors 1, 2 and 6) while supporting <u>mitigation strategies</u> (factors 1, 2 and 6), there is no sound reason to impose an unnecessarily constraining Desired Future Condition. An overly restrictive, artificial regulatory stranglehold on the exercise of property rights runs directly counter to the critical needs of the State of Texas, including high growth areas within GMA 12 (factors 1 and 2) and constitutional limits (factor 7), making the POSGCD/LPGCD preferred Simsboro DFC infeasible (factor 8). This balancing occurs not only in the GMA 12 joint planning process but, critically and appropriately, each District's adoption of rules that set the stage for permit holders' investment-backed expectations. Those expectations tie to a District's adopted rules, including spacing and production limits. Even before considering out-of-district limitations imposed by other GCDs in joint planning, a landowner must invest significant resources to secure *and maintain* permits issued by a District. These efforts take time and money and create additional, meaningful regulatory burdens and hurdles that already weigh against a landowner's ability to exercise its private property rights.

When properly examined through the lens of the statutory factors, the highest practicable level of groundwater production from the Simsboro Aquifer *balanced with* the conservation, preservation, protection, recharging, and prevention of waste of groundwater, as considered with the lens of the required factors, supports the modeling run and DFC proposed by BVGCD. Recent comments at GMA 12 suggest that POSGCD and LPGCD have no interest in taking into consideration any information that does not conform to their seemingly predetermined philosophical position that now is the time to pull up the draw bridge on availability of water needed for local and regional growth. The perspective that landowners have a property right to impede others' groundwater production (because they would prefer to leave groundwater in place[1]) does not align with the statutory mandate to begin a DFC-balancing exercise with the *highest* practicable level of groundwater production. Nor is it consistent with Texas's long history of protecting private property and prioritizing responsible (and necessary) use of valuable natural resources. Further it ignores the significant local effort of the BVGCD to propose a meaningfully informed sound policy balance in accordance with the State's preference for local control over groundwater management.

GMA 12's refusal to meaningfully consider key information is reflected in multiple mischaracterizations made at the April 16, 2026 GMA 12 meeting. Intera, seemingly at the direction of POSGCD, makes incorrect assertions about the BVGCD, its Local Landowner Settlement Agreement, and socioeconomic studies submitted to GMA 12.

Intera claims, for example, that it is "unclear" if BVGCD has "performed the science" to support the balance of highest practicable production with conservation. BVGCD's issuance of production permits included detailed hydrologic evaluations, public hearings, and in the case of the Local Landowner permits, additional evaluation by *multiple* hydrologists and engineers through a rigorous settlement negotiation. BVGCD has actively participated and shared pumping files and its inputs and assumptions throughout the GMA 12 joint planning process. To the extent anything remains "unclear" to the GMA 12 representatives about BVGCD's detailed, and stakeholder-informed, "perform[ance of] the science," that reflects a willful choice by those representatives not to seek clarification.

Intera next announces a misunderstanding and mischaracterization of the socioeconomic evidence that has been presented to GMA 12, including the WestWater Research Socioeconomic Impact Study commissioned by BVGCD (the "WestWater Report") and the analysis prepared by Gabriel Collins of Caracal Commodities, LLC (the "Collins Report"). Neither the WestWater

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[1] This philosophy is so fixed that it is our understanding POSGCD board members and employees participate in a conservation program (the Aquifer Conservancy Program) by which they pay not only others *but themselves* to not produce groundwater, diverting funds away from mitigation opportunities.

Report nor the Collins Report focus on "income that can be generated by selling water." Both, instead, appropriately focus on the socioeconomic harm of artificially constraining an available significant water resource—impacts that are minimized by setting a reasonable DFC. The WestWater Report focuses specifically on the volumetric and socioeconomic difference between making water available using the reasonably balanced DFC proposed by BVGCD and accepting the overly constraining philosophy advocated by POSGCD and LPGCD. See Section 3.4 (Scenario Definition). The related socioeconomic impact in Brazos and Robertson Counties is stark. The Collins Report views the Simsboro Aquifer and existing permits as a significant water resource available to a multiple county area. In doing so, it acknowledges that significant water demand does not end at the boundary line of GMA 12. The Collins Report looks just slightly beyond GMA 12 to include proximate Central Texas counties that are expected to receive Simsboro water. Again, this report illustrates the socioeconomic impact in Central Texas of GMA 12 *choosing* based on selective criteria to artificially restrict practicable groundwater production. Neither report focused on income generation from water sales, even though export of groundwater does indeed generate significant local operational revenues, income to producers, and transport fees paid to a groundwater district that could support mitigation. Intera presented a socioeconomic analysis, but it acknowledged, when asked, that it does not reflect the reality that impacts identified could be addressed by mitigation. Further, the Intera analysis does not provide any perspective on regional level socioeconomics.

UWBVF urges GMA 12 to begin the statutory balancing test for the Simsboro Aquifer where the legislature set the starting point: the highest practicable level of groundwater production. After beginning there, UWBVF asks all GMA 12 members to meaningfully engage with the socioeconomic evidence before the GMA and the other statutory factors. The DFC and modeling run proposed by BVGCD reflects evaluation of the best available science and reasonable, substantive balancing of the statutory factors. A DFC that disregards existing permitted production, ignores the scenario-specific socioeconomic evidence provided by the WestWater Report and the Collins Report, and fails to meaningfully consider the nine statutory factors would be unreasonable. That DFC would not withstand scrutiny under the appeal process set forth in Texas Water Code § 36.1083.

Sincerely,

David L. Lynch, UWBVF

cc: Geoff Adamson, UWBVF
Paulina Williams, Baker Botts L.L.P.