



April 25, 2026

To: GMA-12 Groundwater Conservation District Representatives

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

Via Email

From: Steve Box, Executive Director, Environmental Stewardship

Re: April 16 Agenda Items 7(3), 7(4), 7(8), 7(9), and 11. Letters received by LPGCD and GMA-12 regarding preferential treatment in consideration of factors (6) and (7) of the 9 factors for adopting DFCs.

Environmental Stewardship (ES) is a Texas 501(c)(3) nonprofit organization with interests in the conservation and protection of the Texas Colorado River including segments located in Bastrop and Fayette Counties, Texas. The subject agenda items for the April 16 meeting address issues related to adopting desired future conditions (DFCs) for aquifers located in segments 1428 and 1434 of the Colorado River Alluvium (Colorado Alluvial Aquifer) that interacts with the Colorado River in these segments by exchanging groundwater and surface water between these two water bodies in the Colorado River watershed.

Environmental Stewardship is especially interested in supporting the development and adoption of desired future conditions on these segments as related to the agenda items as discussed below.

Agenda Item 11: Discussion and possible action on adoption of Proposed Desired Future Conditions (DFCs) for the aquifers in GMA12 for the fourth round of joint planning.

ES requests that the Colorado River Alluvium (Colorado Alluvial Aquifer) be added to this list of aquifers for the following reasons:

1. ES Petition to Lost Pines GCD (LPGCD) to adopt DFCs for the Colorado Alluvial Aquifer that are protective of the gaining relationship between the river, and the aquifer dated September 20, 2022ⁱ.

BRINGING SCIENCE TO DECISION-MAKING

2. LPGCD has recognized the need for such protective measures and has prepared a scope of work that has been given to the Texas Water Development Board requesting funding for installation and monitoring of the surface water-groundwater interaction between the Colorado River and the Colorado River Alluvium within its jurisdiction in Bastrop County Texasⁱⁱ.
3. This scope of work will be informative to LPGCD during the fourth round of joint planning as it considers factors 7(3), 7(4), 7(8) and 7(9) to establish and adopt DFCs for the Colorado River Alluvium.
4. Colorado River segment 1434 extends from the lower end of segment 1428 in Bastrop County to LaGrange in Fayette County, TX and likewise extends the Colorado River Alluvium into Fayette County under the jurisdiction of Fayette County Groundwater Conservation District (FCGCD). ES will also be petitioning FCGCD to develop and adopt DFCs for the Colorado River Alluvium located in Fayette County.

Motion Request 1: ES request that Lost Pines GCD motion to add the Colorado River Alluvium to the list of aquifers in Item 11 for purpose of being included in the fourth round of joint planning and that Fayette County GCD second the motion. ES requests that the GMA12 representatives pass the motion and that this letter and the actions taken be included in the records of this meeting.

Preferential treatment in consideration of factors (6) and (7) of the 9 factors for adopting DFCs:

Several letters addressed to GMA-12 representatives suggest that factors (6) and (7) should be given preferential treatment in considering the adoption of DFCs because of the investment-based expectations of the landowners. As discussed in Mr. Allmon's letter dated April 13, 2026 (ATTACHMENT A), Environmental Stewardship interprets Water Code Section 108(c) and (d) to be meant to balance the nine (9) factors when "proposing to adopt or amend existing desired future conditions", Section 108 (c)(4) and "Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider" all of the 9 items listed equally. Subsection 108 (d)(1-9).

ES therefore interprets that subsection 108 items (3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge; and (4)

other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water; are to be given equal consideration.

Several of the letters also suggest that factor sections 108(d-1 and d-2) should be the “starting point” for developing and adopting DFCs. ES interprets the nine factors to be the starting point of a 3 step process to:

- 1) estimate the ability of the aquifer(s) to produce groundwater, and at what quantities and rates the aquifers could be expected produce such groundwater given the current best available science;
- 2) establish DFCs for the different aquifer or geographic area (d-1(1 and 2)); and
- 3) determine that the desired future conditions proposed provide a balance between the highest practicable level of groundwater production and conservation, preservation, protection, recharge, and prevention of waste of groundwater and control of subsidence in the management area.

The “Starting Point” is intended to provide an understanding of the characteristics of the aquifers being considered for groundwater production prior to establishing DFSs and prior to balancing highest practicable levels. In this way the best science available should provide the information needed to inform best practices in developing the groundwater resources without harming surface water resources. The END point comes AFTER serious consideration of what the aquifers are able to provide while also protecting the surface waters of the Colorado and Brazos Rivers. This is not just a Central Texas issue, the impacts of these decisions environmentally are felt all the way to the Gulf Coast, and for the Colorado River, Matagorda and Lavaca Bays.

The environmental and socioeconomic impacts of over-pumping the Simsboro Aquifer could be dire.

The limited scientific studies done independently by Environmental Stewardship and a study commissioned by the Texas Water Development Board (TWDB) indicate that the hydraulic pressure of the outflow of groundwater into the Colorado River is likely what protects the aquifer from being contaminated by the PFAS (per- and polyfluoroalkyl substances) that are in the mainstem of the river below Austin. Were these compounds allowed to enter into the Simsboro Aquifer at levels measured in the river they would contaminate the groundwater drinking for millions of people in Central Texas.

Environmental Stewardship found that PFAS compounds are present in the mainstem of the Colorado River below Austin, but fortunately not in most of the tributaries nor in alluvial groundwater wells near the riverⁱⁱⁱ.

The data reveals that PFAS are present in the Texas Colorado River below Austin in quantities that 1) result in instream aquatic toxicity, 2) result in the endangerment of the drinking water supply, and 3) result in aquatic bioaccumulation that threatens human health – all of which, appear to be in violation of Texas laws.

The Colorado Alluvial Aquifer, which exchanges water with the Colorado River, was anticipated to exhibit PFAS contamination, along with other aquifers. Contrary to this expectation, this was not the case. Neither the Colorado Alluvial Aquifer nor the wells completed in the other major and minor aquifers sampled showed contamination by PFAS compounds. ES hypothesizes that the absence of contamination in these aquifers may be related to the "gaining" relationship of the river to these aquifers, wherein they provide groundwater flow to the river during most river stages.

This hypothesis is based on a pilot surface water-groundwater interaction study^{iv} conducted in the Pope Bend segment of the Colorado River. This study found that alluvial groundwater levels rise above the top of the permeable alluvium materials screened, suggesting primarily artesian hydrogeologic conditions at the site. An average baseflow rate of about 186 ft³/hr. was calculated from the monitoring data, which equates to approximately 0.2 ft³/day per foot of riverbank. The average groundwater flux is from the alluvium toward the river (indicating "gaining" stream conditions). When applied to the 4.5-mile bank length of the Pope Bend point bar structure, it is estimated that alluvium contributes groundwater to the river at an average rate of approximately 4,460 ft³/day [37.4 acre-feet per year (ac-ft/yr)] in that area.

The data collected from summer 2020 through February 2021 reveals that groundwater levels respond rapidly to fluctuations in river levels. This indicates that there is a robust hydraulic connection between the river and the alluvium at the site. However, water temperature and conductivity measurements suggest that only minor exchanges in water volume take place between the river and alluvium in response to high-water fluctuations in river stage. In other words, during a high river fluctuation period, the inflow of surface water into the alluvium is not as substantial as might be expected. As such, our hypothesis is that the constant "back pressure" generated by groundwater flowing to the river is adequate to minimize or eliminate the flow into the alluvium and other aquifer formations.

Motion Request 2: ES further requests that a motion be passed to HOLD DFCs where they are while taking the next 5 year period to properly consider the 9 factors using the best available science to estimate the amount and rate of groundwater withdrawal that can be

done while maintaining the Colorado River as a primarily gaining stream through the Bastrop County segment 1428 (LPGCD jurisdiction) and thence through Fayette County segment 1434 (FCGCD jurisdiction), and maintain freshwater inflows into Matagorda Bay and Lavaca Bays. Like the Brazos River Alluvial Aquifer, the Colorado River Alluvial Aquifer deserves the same recognition and treatment relative to developing and adopting DFCs.

ⁱ <https://environmental-stewardship.org/lost-pines-groundwater-conservation-district/petition-to-protect-colorado-river/> and <https://environmental-stewardship.org/wp-content/uploads/2022/09/2022.09.22-DFC-LetterFiled.pdf>

ⁱⁱ links to LPGCD April 15, 2026 Agenda: <https://lostpineswater.org/AgendaCenter#docaccess-fae31282166cb1bfd61ec152a5fd6d75> see Items 4)(e) and (h)(6)(i), Minutes not yet available; and February 25, 2026 Agenda (item 5(f) <https://lostpineswater.org/AgendaCenter#docaccess-3dce2ec61317098e84120f34e40412e227edf97205e6dab14a61f95136882ddb> and Minutes (Item 5(f) <https://lostpineswater.org/AgendaCenter#docaccess-2018639da1df5073767c4781a38182d5> .

5 (f). Discussion, consideration, and possible action on resolution regarding applying for a Texas Water Development Board data collection grant. General Manager presented the item, which is a new grant established by the Texas Legislature during their last session for groundwater conservation districts, the purpose being only for data collection and science. General Manager Hernandez recommended submitting a proposal for a \$50,000.00 grant with \$50,000.00 matching, if needed. Vice-President Arsuffi moved to approve the resolution to allow the General Manager to submit the grant application to the Texas Water Development Board, including matching \$50,000.00. Director Phillips-Burgess seconded the motion, which carried unanimously.

ⁱⁱⁱ <https://environmental-stewardship.org/pfas-forever-chemicals-in-texas-colorado-river/>

^{iv} Surface Water-Groundwater Interaction Pilot Study Prepared for Texas Water Development Board, Lower Colorado River Authority, Brazos River Authority, Post Oak Savannah Groundwater Conservation District. TWDB Contract No. 1900012305. Prepared by R W Harden and Associates, and INTERA. July 2021. https://environmental-stewardship.org/wp-content/uploads/2025/02/PFAS_Compiled_FINAL_12Dec24pdf.pdf (see Footnote 17 of this report).

ATTACHMENT A

PERALES, ALLMON & ICE, P.C.

ATTORNEYS AT LAW

1206 San Antonio Street
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
info@txenvirolaw.com

Of Counsel:
David Frederick
Vic McWherter
Claire Krebs

April 13, 2026

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Mr. David Van Dressar – Fayette County GCD
Mr. Elvis Hernandez – Lost Pines GCD
Mr. David Bailey – Mid-East Texas GCD
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Via Email

Re: Groundwater Management Area 12 Desired Future Conditions.

Dear Groundwater Management Area 12 Representatives:

Environmental Stewardship seeks to protect the groundwater and surface water resources of the Colorado River watershed in the Lost Pines region, with many members who are landowners in the area, and has actively participated in the regional planning process for more than a decade. Environmental Stewardship submits these comments to respond to correspondence submitted on April 3, 2026 on behalf of Recharge Water (“Recharge”).

As an initial matter, Recharge overstates its role in the water planning process. It is true that Recharge holds permits for a large volume of water. But, this does not allow it to dictate how GMA 12 weighs the statutory factors relevant to the establishment of a DFC. As the Texas Supreme Court noted in *Edwards Aquifer Authority v. Day*, groundwater rights are held subject to regulation by groundwater districts, which have an obligation to consider not only the relative importance of various uses, but also other concerns such as environmental impacts. The same Court noted that groundwater is a resource that *must* be conserved under the Texas Constitution. Additionally, the Supreme Court in *Day* noted that a purpose of groundwater regulation is to afford each owner of water in the “common, subsurface reservoir” (aka aquifer) a fair share. It is appropriate to consider the interests of existing permittees such as Recharge, but the groundwater districts also owe a duty to consider *all* relevant factors, including protecting the property rights of all others in the district by preserving water in the ground for future use, and protecting the environment.

This wholistic approach is consistent with the governing statute, as opposed to Recharge’s advocated approach that disregards much of the governing law. The Texas Water Code requires that, before voting on proposed desired conditions, the districts shall consider:

- Aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
- The water supply needs and water management strategies included in the state water plan;

- Hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
- Other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
- The impact on subsidence;
- Socioeconomic impacts reasonably expected to occur;
- The impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Texas Water Code Section 36.002;
- The feasibility of achieving the desired future condition; and
- Any other information relevant to the specific desired future conditions.

Tex. Water Code § 36.108(d).

Amongst this long list of factors, the total recoverable storage of an aquifer is only one type of hydrologic condition. Other hydrologic conditions of relevance include the dependence of surface waters upon recharge from groundwater (which would relate to impacts on spring flow and other interactions between groundwater and surface water), and the sustainability of pumping. Groundwater planning is of such a comprehensive and long-term nature that the districts owe a responsibility not only to the current generation, but also to future generations.

Recharge also distorts the statute in asking that the districts prioritize the consideration of total recoverable storage. Notably, other hydrologic conditions also explicitly identified for consideration include average annual recharge, inflows, and discharge. Additionally, the statute gives this factor no more weight than environmental impacts, including interactions between groundwater and surface water. The consideration of aquifer discharge would include a consideration of the amount of water leaving the groundwater to discharge into surface waters, such as the Colorado River. The governing statute gives no greater importance to total recoverable storage than to aquifer discharge. Ultimately, it is for the district representatives to consider all total estimated recoverable storage along with all of the other statutory considerations identified above, and *balance* these various considerations, not allowing any one to solely dictate the outcome.

Recharge spills much ink relating to the size of its investments within the area, but this fails to carry the weight which Recharge implies. All property rights are held subject to regulation under the police power of the state. When obtaining its permits, Recharge was well aware that the amount permitted was subject to regulation as a result of applicable desired future conditions, including revised desired future conditions. In claiming a “regulatory takings” (which is recourse Recharge implies it would have available), any such claim would depend upon a careful weighing of all relevant circumstances. *Sheffield Development Co., Inc. v. City of Glenn Heights*, 140 S.W.3d 660 (Tex. 2004). The investments relevant to such an analysis must be *reasonable*. One cannot purchase a lottery ticket, invest a million dollars based upon an unreasonable expectation that they hold the winning ticket, and then sue the state for a taking if their ticket fails to win.

Recharge’s permits could only be understood as granting it the permission to draw an amount of water consistent with desired future conditions which would be set considering the full

range of factors relevant under the governing statute. Recharge cannot reasonably now cite its investment as reasons why the districts must give greater weight to its own permits, or greater weight to total recoverable storage, than other factors (such as environmental impacts) which the governing statute makes clear are at least equally as important as total recoverable storage. If it has invested money based on the expectation that its own objectives would always override all other statutory considerations, then its investment expectations were not reasonable.

Thank you for your attention to this matter. Please contact me if you have any questions.

Respectfully submitted,



Eric Allmon

State Bar No. 24031819

callmon@txenvirolaw.com

PERALES, ALLMON & ICE, P.C.

1206 San Antonio St.

Austin, Texas 78701

512-469-6000 (t) | 512-482-9346 (f)

Counsel for Environmental Stewardship

cc: Ms. Natasha Martin, LPGCD General Counsel
Mr. Greg Ellis, LPGCD Special Counsel