

TERRILL & WALDROP

ATTORNEYS and COUNSELORS

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

July 15, 2026

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

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”). As such, Recharge has a significant interest in the development of GMA 12’s 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.

In its previously submitted comments, Recharge expressed its concern that the Legislature’s critical statutory mandates governing DFC development have been 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 current state of GMA 12’s DFC planning cycle has substantially deepened these concerns.

Specifically, in the eleventh hour, when little time remains to incorporate public comment and adopt lawful DFCs, the various GMA representatives have each selected their individually preferred (board-directed) average drawdown values for the Simsboro Aquifer. Those values were selected from different model runs rather than an agreed-upon modeling scenario. In other words, as the process moves into public hearings, stakeholders are being asked to comment on proposed DFCs *before* there is consensus on the technical basis supporting them. As discussed below, this raises significant concerns regarding GMA 12’s compliance with the statutory DFC planning requirements, the transparency and integrity of the process, and whether it is possible at this point, for stakeholders to be provided with a meaningful opportunity to be heard before the adoption of the DFCs.

I. Public statements confirm that the proposed DFCs are not based on the nine statutory factors or consideration of the highest practicable level of groundwater production.

In its previously submitted comments, Recharge expressed concern that “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.”¹ Those concerns have been confirmed by public statements during the May 20, 2026 meeting of the Lost Pines GCD Board of Directors.

In that meeting, Lost Pines GCD General Manager Elvis Hernandez updated the Board on the status of the current DFC planning cycle. In so doing, Mr. Hernandez stated that the goal of model run PS4-2 was, from the outset, to maintain DFCs that were the same as, or substantially similar to, those adopted during the prior planning cycle. Additionally, Mr. Hernandez expressed concerns regarding the integrity of the planning process itself, declaring that the DFC “process is broken,” that “the process is being gamed,” and that representatives were “excluding permits to make the numbers look better.” Mr. Hernandez also stated that if GMA 12 failed to reach agreement on a model run and DFCs, the existing DFCs would remain in place, and suggested that preserving the existing DFCs through failure to reach consensus may be a strategy being pursued by certain districts.

Mr. Hernandez’s comments confirm two things. First, GMA 12 did not apply the legislative framework established by Chapter 36 to arrive at the proposed DFCs. Rather, the desired DFCs were identified first, and the modeling efforts were manipulated to support that predetermined outcome. Second, that departure from the statutory process coupled with Mr. Hernandez’s proclamation that the system is broken and being gamed, raises significant concerns not only regarding compliance with Chapter 36, but also the transparency of the planning process and whether stakeholders have been, or even can at this stage, be afforded a meaningful opportunity to be heard before the end of the planning cycle.

II. GMA 12’s joint planning does not provide a meaningful opportunity for public participation.

The Legislature established a lengthy five-year planning cycle for development of DFCs to ensure groundwater management areas have adequate time to collect data, evaluate groundwater availability models, assess the statutory factors, solicit stakeholder input, and develop DFCs through a transparent and deliberative process. *See* TEX. WATER CODE § 36.108(d), (d-2), and (d-3). Despite the ample time afforded by statute, GMA 12 has reached the final stages of the current planning cycle without agreement on the most fundamental issue: the modeling assumptions and pumping scenarios against which the proposed DFCs are to be evaluated.

To date, GMA 12 representatives have been unable to agree on a single model run or pumping file to serve as the technical basis for the proposed DFCs. Instead, stakeholders have been presented with a succession of evolving pumping files and modeling assumptions, even after repeated assurances that no further changes would be made.

Most concerning, after previously representing to the public that PS4-2 would serve as the final model run for evaluating the proposed DFCs, GMA 12 abandoned that approach. Rather than reaching agreement on a single modeling scenario, GMA 12 was able to reach agreement only by allowing each district to select its own board-directed average drawdown value for the Simsboro

¹ *See* Recharge Comments (April 15, 2026).

Aquifer, with each value derived from that district's preferred model run. In short, the only thing agreed among the GMA 12 districts was an agreement to disagree. As a result, the proposed DFCs are not supported by a single, agreed-upon technical analysis, but instead by a compilation of drawdown values taken from different model runs.

The Texas Constitution's due course of law guarantee ensures that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." TEX. CONST. art I, § 19. At a minimum this "requires notice and an opportunity to be heard at a *meaningful* time and in a *meaningful* manner." *Mosley v. Tex. HHS Comm'n*, 593 S.W.3d 250, 265 (Tex. 2019) (emphasis added).

GMA 12's conduct to date has deprived stakeholders, including Recharge of a meaningful time and manner for stakeholders to be heard. Although the Texas Water Code requires public hearings before the adoption of the DFCs, these hearings are currently so late in the planning cycle that there is no *meaningful* opportunity for stakeholder comments to be considered, incorporated into revised modeling, or reflected in the proposed DFCs before their adoption. Worse still, stakeholders are being asked to comment on proposed DFCs without access to the final analytical framework on which those DFCs will ultimately rest, reducing the public hearing process to a procedural formality rather than the meaningful opportunity to be heard as required by law.

Conclusion

Recharge owns nearly 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 Texas Constitutions.² 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) (finding a groundwater district's restriction of groundwater production resulted in a taking, requiring payment of just compensation).

The DFC planning process, and its outcome, has a direct impact on Recharge's vested property interests. GMA 12 representatives have themselves declared the process "broken." Thus, Recharge once again 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.

² 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.

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