

Lost Pines Groundwater Conservation District
Post Oak Savannah Groundwater Conservation District
Brazos Valley Groundwater Conservation District
Mid-East Texas Groundwater Conservation District
Fayette County Groundwater Conservation District

July 21, 2021

Dear Boards of the GMA-12 Groundwater Conservation Districts:

As a landowner and an attorney, I urge you to reject the proposed DFCs.

The proposed DFCs prioritize the interests of large commercial pumpers at the expense of every other interested party: domestic well owners, small local businesses, anyone who relies on surface waters (which are connected to groundwater), our environment, and all future users.

This approach ignores the clear statutory requirements of Chapter 36 of the Texas Water Code, which direct GCDs to balance production with conservation and preservation of our water resources. In setting the DFCs, GCDs are supposed to consider nine factors, including the impacts on all landowners, surface waters, and the environment.

Instead of addressing these factors, the proposed DFCs look at one element alone – what is needed to allow all current pumpers to continue pumping unabated.

This is not only inconsistent with Chapter 36, but it appears to be a response to baseless threats. I have read the letter sent by Vista Ridge to the GCDs, and it is apparent that Vista Ridge seeks to intimidate the GCDs into setting the DFCs at such a level that it, and other large commercial pumpers, will never have to reduce their pumping.

I believe that attorneys representing other landowners have already provided information on the likelihood of a takings challenge against the DFCs being dismissed for lack of ripeness. So I will instead briefly comment on the merits of such a takings claim.

One of the factors courts look at in a takings claim is whether the party claiming a taking had “reasonable, investment-backed expectations” that their use of the property would be allowed. Thus, for example, a landowners’ investment in irrigation wells is relevant evidence.

But simply spending money to build wells does not meet this test. **The expectation must be “reasonable.”**

As a frequent attendee of the Post Oak Savannah GCD meetings, I have repeatedly heard statements that indicated that Vista Ridge believed that the groundwater models were overly conservative and that its pumping would not result in exceedance of the DFCs that existed when its permit was granted.

There have also been repeated public statements that Vista Ridge was informed at the time its permit was granted that it would face cutbacks if necessary to avoid exceeding the DFCs. The Vista Ridge permit has been amended twice in recent years, and the potential for its pumping to be reduced based on DFC exceedance was repeated each time.

In other words, Vista Ridge **cannot** have a **reasonable** expectation that the DFCs would be increased to avoid the need for cutbacks. The claim could not withstand the sort of inquiry that occurs in a court case during discovery or a trial. Vista Ridge's best hope to allow its pumping to continue unabated is to avoid such a court case by convincing the districts within GMA-12 to sacrifice all other interests in setting new DFCs.

I urge you not to cave to these tactics. Please reject the proposed DFCs and develop revised DFCs that comply with the statutory directives to consider all the affected interests.

Sincerely,
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Cc: Simsboro Aquifer Water Defense Fund
Environmental Stewardship