

# EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

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FAZZINO INVESTMENTS, LP for  
Itself and All Others Similarly  
Situated,  
Plaintiffs,

v.

Case No.

BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT,  
Defendant.

6:25-cv-00001-ADA-DTG

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VIDEOTAPED DEPOSITION OF MICHAEL R. THORNHILL

DATE: Friday, March 27, 2026  
TIME: 10:04 a.m.  
LOCATION: Lloyd Gosselink Rochelle & Townsend,  
P.C.  
816 Congress Avenue, Suite 1900  
Austin, TX 78701  
OFFICIATED BY: Nicole Johns  
JOB NO.: 7983131

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF FAZZINO INVESTMENTS, LP:

RICHARD COFFMAN, ESQUIRE

Coffman Law Firm

3355 West Alabama Street, Suite 240

Houston, TX 77098

rcoffman@coffmanlawfirm.com

(409) 833-7700

ON BEHALF OF PLAINTIFF FAZZINO INVESTMENTS, LP:

C. BRANTLEY JONES, ESQUIRE

Sprouse Shrader Smith

701 South Taylor Street

Amarillo, TX 79101

brantley.jones@sprouselaw.com

(806) 468-3300

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A P P E A R A N C E S (Cont'd)  
ON BEHALF OF DEFENDANT BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT:

JOSE DE LA FUENTE, ESQUIRE  
Lloyd Gosselink  
816 Congress Avenue  
Austin, TX 78701  
jdelafuente@lglawfirm.com  
(512) 322-5800

ALSO PRESENT:

Brad Rosauer, Videographer

1 Q And as you know, generally described, it's  
2 owned in place, subject to reasonable regulation, as  
3 real property by the owner of the surface estate or  
4 someone else they transferred it to.

5 A Yes.

6 Q Okay. And I'm going to ask you some  
7 questions that -- I just want to be clear what is not  
8 in your opinion and report. These may be pretty short  
9 and easy.

10 You're not offering any opinion on the  
11 dollar value for any particular tract of land in the  
12 district in your expert opinion. Are you?

13 A Not in this case. No. I don't feel like  
14 it's necessary.

15 Q Okay. You have no opinion of the dollar --  
16 well, let me talk about something.

17 The Fazzino tract, the 69-acre tract that is  
18 Mr. Fazzino -- is Fazzino Investments, LP's and is the  
19 subject of Fazzino Investments, LP's particular  
20 complaint. Do you understand the tract I'm talking  
21 about?

22 A I'm aware of the tract, yes.

23 Q Okay. So if we're talking about the Fazzino  
24 tract going forward, do you understand it's that 69.4-  
25 or-so-acre tract?

1 A I understand that that's the -- the tract  
2 that's subject to this -- the suit.

3 Q Okay. And I just want to make sure we have  
4 the nomenclature. I don't confuse you when I say "the  
5 Fazzino tract." You knew that's what we're talking  
6 about.

7 A Yes.

8 Q Okay. So you're not offering any opinion of  
9 the dollar value of the Fazzino tract in this case?

10 A No.

11 Q Either before the rule change or after?

12 A No.

13 Q You're not offering an opinion as to the  
14 dollar value of the groundwater component of the  
15 Fazzino tract alone?

16 A Nope.

17 Q Okay. Either before or after the rule  
18 change?

19 A I'm not.

20 Q Okay. I do want to go to paragraph 10 of  
21 your report. And oh, about two-thirds down, where the  
22 line that begins with "Capital new rules." Do you see  
23 that? Maybe it's more like 60 percent of the way  
24 down.

25 A I'm not seeing it here --

1 A Yes.

2 Q And then you talk about what the calculation  
3 is under the new rules below that; right?

4 A Yes.

5 Q Okay. What I just want to understand is,  
6 these are -- these calculations are exemplar or  
7 hypothetical numbers. This isn't a calculation as to  
8 a particular tract of land that you're -- you've  
9 identified?

10 A That's correct.

11 Q Okay. This is not an analysis of, say, for  
12 example, the Fazzino tract?

13 A No.

14 Q Or any of the tracts surrounding the Fazzino  
15 tract?

16 A No.

17 Q All right. Let's go to paragraph 9. At the  
18 top of paragraph 9, you refer to "minimum well size to  
19 be economically viable for selling water to public  
20 water systems, other than localized small systems, for  
21 industrial purposes and for large-scale irrigation  
22 purposes." You see that?

23 A Yes.

24 Q Okay. These are not the only possible  
25 purposes for a Simsboro well in the district. Are

1 they?

2 A What uses are you referencing?

3 Q Public water systems, industrial purposes,  
4 large-scale irrigation.

5 A I'm sure there are other uses, potential  
6 uses.

7 Q Okay. Well, for example, you say, you know,  
8 "other than localized small systems," that may be a  
9 use.

10 A Yes.

11 Q And there may be other uses you haven't  
12 accounted for here?

13 A Possibly.

14 Q Okay. For example, like if a 69-acre  
15 property was developed as a small residential  
16 development, and the well was drilled to serve that  
17 development; that could be a purpose.

18 A That could be.

19 Q Okay. You haven't analyzed -- again -- and  
20 I may ask you, just as a follow up to be clear,  
21 specific questions about the Fazzino tract you may  
22 have already answered.

23 You haven't analyzed the Fazzino tract to  
24 determine what particular purposes may or may not be  
25 available for it?

1 A I did not analyze the Fazzino tract for  
2 that.

3 Q Okay. And you're not offering an opinion as  
4 to what other purposes are or are not available for  
5 any other tract in the district?

6 A No. It's not -- it's not about the -- the  
7 specific purposes. No.

8 Q Okay. You haven't analyzed any particular  
9 tract to exclude other such potential purposes?

10 A No.

11 Q Or calculate the economic cost or yield of  
12 such purposes?

13 A No. I have not.

14 Q All right. At the end of this paragraph 9,  
15 you state that "This effective" -- referring to the  
16 rule change -- you state that "This effectively means  
17 that the landowner's groundwater rights have been  
18 devalued by at least 75 percent." You see that?

19 A I see it.

20 Q But you -- again, you are not offering any  
21 opinion of dollar value or dollar impact on any  
22 specific property?

23 A It -- it has to do with the -- the right.  
24 The amount of water that can be pumped.

25 MR. DE LA FUENTE: Object to

1       responsiveness.

2       BY MR. DE LA FUENTE:

3           Q       I just -- I'm just asking, you're not  
4       offering any opinion as to dollar value -- a reduced  
5       dollar value as to any particular property?

6           A       I'm not offering any dollar value.

7           Q       Okay. You then state in the next sentence,  
8       "In some instances, such a burden may cause a complete  
9       loss of an otherwise viable market." You see that?

10          A       Yes.

11          Q       Okay. Again, your report does not list or  
12       identify any such instances; right?

13          A       It does not.

14          Q       Okay. And your reference to the "otherwise  
15       viable market" as we just talked about -- you haven't  
16       analyzed any specific property to determine whether or  
17       not there is a viable economic market for a well on  
18       that specific property?

19          A       I haven't -- didn't analyze any specific  
20       property. But just knowing what is happening in the  
21       area, there -- there are markets that are evolving.

22          Q       But as to any specific property, more  
23       questions would have to be asked to determine whether  
24       that was an otherwise viable market for that property;  
25       right?

1 A Yes.

2 Q And you haven't asked or answered those  
3 questions in your expert opinion here?

4 A Not in this one. No.

5 Q Okay. Let's go down to paragraph 10, about  
6 the fifth line, beginning "Within my experience." You  
7 refer to buyers having -- or project developers likely  
8 having "little to no interest in leasing or purchasing  
9 groundwater rights and tracts less than 35 acres under  
10 the old rules or less than 140 acres under the new  
11 rules." Do you see that?

12 A I see it.

13 Q And then give the example of pumping rates  
14 for individual wells of less than 700 GPM. You see  
15 that?

16 A I see it.

17 Q Okay. And I just want to understand, is the  
18 break -- by your opinion, the key is the break point  
19 of the well capacity. They need a 7 -- you're  
20 referring to buyers who want a 700 GPM or greater  
21 well?

22 A By and large the expense of drilling wells  
23 into the Simsboro -- there are other alternatives that  
24 may be shallower that are -- and cheaper. So yes.

25 Q And just to be clear, the type of project

1 I have to drill a hundred feet to hit an aquifer, I  
2 drill; I hit the aquifer. That water may be pushed up  
3 to where it's actually only 80 feet below the top --  
4 the surface of my land?

5 A It -- it depends on where the top of the  
6 aquifer is, if you call it artesian or not.

7 Q Absolutely. But our bottom line is, the top  
8 of the aquifer is at one space and, then when I punch  
9 a hole in it, water pushes up into the wellbore a  
10 certain amount?

11 A Above the top of the aquifer, yes.

12 Q Okay. And then you refer -- and then you  
13 note that "while the storage depletion would be very  
14 small in an artesian aquifer." You see that?

15 A Yes.

16 Q And this is an artesian aquifer; right?

17 A Throughout the vast majority of the area,  
18 yes.

19 Q Okay. And by -- when I say this -- the  
20 Simsboro Aquifer is an artesian aquifer?

21 A The Simsboro is artesian throughout the vast  
22 majority of -- of the counties, yes.

23 Q Okay. So first things first, you have not  
24 observed, analyzed, or opine that the Fazzino tract  
25 has suffered any decline in artesian head or pressure?

1           A       Generally, I know it to be true; but I have  
2 not analyzed the Fazzino property, no.

3           Q       Okay. You're not offering an opinion as to  
4 any particular property having suffered a decline -- a  
5 particular decline in artesian head or pressure in  
6 this opinion. Are you?

7           A       That's correct.

8           Q       Okay. And you're not offering your opinion  
9 here that the amount of Simsboro groundwater beneath  
10 the Fazzino tract has been reduced by any measurable  
11 amount?

12          A       No.

13          Q       Okay. All right. I'm going to go ahead and  
14 mark as Exhibit 4 -- try to do it without smudging it.  
15                   (Exhibit 4 was marked for  
16                   identification.)

17                   All right. I'm going to hand you what's  
18 been marked as Exhibit 4. Do you recognize Exhibit 4?

19          A       Yes.

20          Q       And what is Exhibit 4?

21          A       This is the aquifer evaluation report that  
22 my Thornhill Group, which is a predecessor to Legacy  
23 Groundwater, prepared on behalf of Mr. Fazzino for his  
24 permit application.

25          Q       And this is -- if you go to page 9, this is

1 high-volume wells. "Due to the distance of the  
2 proposed wells from the outcrop of the aquifer,  
3 reduction in artesian pressure is the only anticipated  
4 measurable effect from the proposed pumping." You see  
5 that?

6 A I see it.

7 Q And that -- if we're talking in general,  
8 that's true for these wells. It's true for any  
9 similar size well throughout the aquifer; right?

10 A Any well in the artesian part. Doesn't  
11 matter what size well.

12 Q That's the only anticipated measurable  
13 effect in your opinion?

14 A There is a slight reduction in -- in  
15 storage, but it's probably very, very small.

16 Q Well, in fact, in your next sentence you say  
17 "The aquifer will remain completely full, and there  
18 will be only an infinitesimal reduction in storage."

19 A That's correct.

20 Q That's correct. So it is correct if we were  
21 standing in front of the court today, and the judge  
22 turned to you and asked, "Look, I want to know what  
23 these large-volume wells do to the total volume of  
24 water remaining in storage under any particular  
25 property." You would say, "The aquifer will remain

1 completely full, and there will be only an  
2 infinitesimal reduction in storage." Wouldn't you?

3 A Yes.

4 Q Bottom line is, however many millions of  
5 gallons of Simsboro groundwater exists in a local  
6 area, that number of millions are going to remain  
7 functionally the same.

8 A Functionally the same in -- yes.

9 Q Okay.

10 A I -- I will add that -- that, if you read  
11 further, the -- the leakage between aquifers is also  
12 an impact. But that also serves as a source of water  
13 to help keep the Simsboro full.

14 Q What number did I give that? Four?

15 A Four.

16 Q Let me hand you what is being marked as  
17 Exhibit 5.

18 (Exhibit 5 was marked for  
19 identification.)

20 Can you identify Exhibit 5, please?

21 A It is also an aquifer evaluation report  
22 prepared for Mr. Brad Eli and the Eli Family  
23 Partnership associated with permit applications for  
24 five new Simsboro wells.

25 Q Isn't it eight?

1 questioned answers about the undetectable amount for  
2 the current and foreseeable future pumping demands.  
3 And you noted that "the effects were small," and you  
4 characterize it as "essentially undetectable." Do you  
5 see that on -- going down to page 78?

6 A Yeah. A very small fraction of the total  
7 storage, yes.

8 Q Okay. And I just want to ask you, do you  
9 stand by your testimony on that point?

10 A Yes.

11 Q Okay. Let's go back to Exhibit 2, your  
12 report, and looking at paragraph 14 kind of in the  
13 middle. Your comparison point is new permits versus  
14 people who have permits under the old rules. You note  
15 that "the new rules serve to put holders of new  
16 permits at risk of suffering drainage from their  
17 neighbors pumping under the old rules." You see that?

18 A Yes.

19 Q And again, "drainage," your -- that's your  
20 change in direction and magnitude of flow through the  
21 aquifer?

22 A Yes.

23 Q Okay. You're not offering any opinion that  
24 that effect has actually occurred or is about to occur  
25 on the Fazzino tract?

1           A     I don't have any basis to -- to know if it  
2     is or isn't on the Fazzino tract.  No.

3           Q     And you're not offering any opinion that it  
4     is or isn't occurring with regard to any particular  
5     tract in this expert report.  Are you?

6           A     Not in -- no.

7           Q     Okay.  The distinction you refer to in this  
8     sentence is entirely the time-based distinction.  
9     Holders of new permits versus neighbors pumping under  
10    the old rules; right?

11          A     Yeah.  The distinction is the -- the  
12    disparity between the old rules and the new rules.

13          Q     Which is, you say, "literally treating  
14    different owners in the same aquifer, or groundwater  
15    reservoir, differently."  Right?

16          A     Yes.

17          Q     And that's entirely time-based, based on the  
18    rule change.

19          A     It's based on the rule change.  Yes.

20          Q     Paragraph 16, you note that "the production  
21    and spacing rules are based on a formula that  
22    contemplates a circle around any given wellbore."  
23    Right?

24          A     Yes.

25          Q     And in fact, in your own analysis, you

1 uses?

2 A I am not.

3 Q Have you analyzed, for the purpose of your  
4 opinion here, the current or potential future purpose  
5 of any particular tract in the district?

6 A No.

7 Q You haven't analyzed -- you're not offering  
8 any opinion about any contracts or pending contracts  
9 to develop Simsboro groundwater from the Fazzino tract  
10 at any time. Are you?

11 A Not in -- not in this case. No.

12 Q Or for any other particular tract. Are you?

13 A No.

14 Q We talked about the fact that you're not  
15 offering a valuation opinion. You don't have any  
16 independent knowledge of any valuation of the Fazzino  
17 tract. Do you?

18 A No.

19 Q Either as a whole or just the groundwater  
20 interest?

21 A No.

22 Q Same question for any other tract in the  
23 district?

24 A That's correct.

25 Q I don't see in here any opinion that any

1           A     I -- I think also the -- the -- just the  
2     reality that that's -- they're -- they're deprived of  
3     their property right to produce a fair share of  
4     groundwater.

5           Q     You believe that the result of their  
6     inability to produce the same amount of groundwater  
7     under the new rules versus the old rules deprives them  
8     of their fair share?

9           A     Yes.

10          Q     Okay. And again, you're not offering any  
11     particular opinion as to any landowner suffering  
12     drainage as you define it; right?

13          A     That's correct.

14          Q     You're not offering any opinion as to any  
15     landowner suffering reduction in storage of any  
16     amount; right?

17          A     That's correct.

18          Q     And that fair opportunity, that is a legal  
19     standard; right?

20          A     I -- I suppose it is -- it -- it just also  
21     makes sense from a hydrogeologic standpoint to me.

22          Q     Okay. But it comes from, you know, this  
23     case law in the state of Texas; right?

24          A     Yes.

25          Q     And to some degree, chapter 36 of the water

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CERTIFICATE OF DEPOSITION OFFICER

I, NICOLE JOHNS, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



NICOLE JOHNS

Notary Public in and for the  
State of Texas

Review of the transcript was requested.

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CERTIFICATE OF TRANSCRIBER

I, MEAGAN HASELTINE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



MEAGAN HASELTINE