

EXHIBIT B

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

FAZZINO INVESTMENTS, LP)
for itself and all others)
similarly situated,)
)
Plaintiffs,) CIVIL ACTION NO.:
)
VS.) 6:25-cv-00001-ADA-DTG
)
BRAZOS VALLEY GROUNDWATER)
CONSERVATION DISTRICT,)
)
Defendant.)

ORAL AND VIDEOTAPED DEPOSITION OF
JOHN CHARLES FAZZINO II
AS CORPORATE REPRESENTATIVE OF FAZZINO INVESTMENTS, LP
JANUARY 28, 2026
VOLUME 1
** REPORTED REMOTELY VIA ZOOM **

ORAL AND VIDEOTAPED DEPOSITION OF JOHN CHARLES
FAZZINO II, produced as a witness at the instance of the
DEFENDANT, and duly sworn, was taken in the above-styled
and numbered cause on January 28, 2026, from 8:59 a.m.
to 12:03 p.m., via Zoom before Rachel J. Payne, CSR in
and for the State of Texas, reported by machine
shorthand, at the Hotel Indigo, 211 Clay Avenue, Waco,
Texas, pursuant to the Federal Rules of Civil Procedure
and the provisions stated on the record or attached
hereto.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

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-- AND --

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FOR THE DEFENDANT BRAZOS VALLEY GROUNDWATER CONSERVATION
DISTRICT:

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ALSO PRESENT:

MR. ALAN DAY - BRAZOS VALLEY REPRESENTATIVE
MR. ROB CURNOCK - VIDEOGRAPHER

1 A. Yes.

2 Q. Okay. When did Fazzino Investments acquire the
3 property that you understand to be at issue in this
4 case?

5 A. In '22.

6 Q. '22 or '21?

7 A. The land was started -- the land was
8 transferred in in '22.

9 Q. Okay. And do you understand the property at
10 issue here has been identified in your discovery
11 responses as 69.41-acre tract of land?

12 A. Yes.

13 Q. Okay. And do y'all have a name for that
14 particular tract of land?

15 A. Highway 6.

16 Q. The Highway 6 property?

17 A. Right.

18 Q. Okay. And I -- I -- really, I just ask that
19 because we're going to be asking about it a lot today,
20 and I'm just wondering whether I'm going to ask you
21 about the 69.41-acre tract of land or the Highway 6
22 tract.

23 A. Either way.

24 Q. Okay. What is JC&C Fazzino Farms, LLC?

25 A. That is a farm operation with myself and my

1 dad.

2 Q. When was that formed, best you can remember?

3 A. '23, I believe.

4 Q. Okay. What -- generally speaking, what assets
5 does it own?

6 A. The farm equipment -- some farm equipment, the
7 crops.

8 Q. What kind of crops do y'all raise?

9 A. Cotton, corn, milo, soybeans.

10 Q. What do y'all raise on the Highway 6 tract?

11 A. That's -- it's in hay production.

12 Q. Okay. How long has it been in hay production?

13 A. Since -- since it was purchased.

14 Q. And so in -- and we spoke about it being
15 transferred to the LP in '22. It was originally
16 purchased by your father?

17 A. Right.

18 Q. When was that, do you recall?

19 A. I don't recall.

20 Q. Was it within your lifetime or --

21 A. Yeah.

22 Q. -- adult lifetime?

23 A. Vaguely, somewhere around '04 to '06.

24 Q. Okay. Early 2000s?

25 A. Yeah.

1 Q. What -- what interest and rights in the
2 Highway 6 tract does JC&C Fazzino Farms have?

3 A. None.

4 Q. Does it have the right to farm that tract?

5 A. They pro- -- I maintain it through the cattle
6 operation, which is strict -- solely John Charles
7 Fazzino II Farms.

8 Q. Okay.

9 A. Purs- -- land rent paid, I maintain fertilizer,
10 take care of the bale- -- baling of hay.

11 Q. All right. So we're talking about a separate
12 entity, John Charles Fazzino Cattle?

13 A. Right.

14 Q. Okay. So we've got John Charles Fazzino
15 Cattle, we've got JC&C Fazzino Farms, and we've got
16 Fazzino Investments, LP, that are -- that are the
17 players here?

18 A. Right.

19 Q. Okay. And I guess what I'm trying to
20 understand is, is -- does anyone pay Fazzino
21 Investments, LP, you know, a hay lease, grazing lease,
22 any payments like that, for the land?

23 A. John Charles Fazzino II Farm pays land rent to
24 the LP.

25 Q. Okay. And as a -- as a function of -- do you

1 have a written lease?

2 A. It's just a handwritten year-to-year deal.

3 Q. Okay. How much does John Charles Fazzino
4 cattle pay to Fazzino Investments, LP, each year?

5 A. I don't recall right now. I deal with so many
6 leases. It's normally somewhere around 10- to \$15 an
7 acre.

8 Q. And the -- as -- as part of the terms of that
9 lease, you then have full access to and rights to grow
10 the hay, cut the hay, sell the hay, et cetera?

11 A. Right.

12 Q. That's an all -- it's an all-in lease?

13 A. Right. We don't sell any hay, we just raise
14 hay -- just raise hay and cut hay for myself.

15 Q. Okay. What is the typical hay yield on that
16 property?

17 A. Depends. It's not -- it's not -- it's not
18 irrigatable land, but it just depends on what -- the
19 rainfall we get. It -- we've done as much -- as little
20 as two bales to the acre, we've done as much as five
21 bales to the acre.

22 Q. Okay. So depending on the wet year -- how wet
23 the year is --

24 A. Right.

25 Q. -- 2 to 5 bales per acre?

1 A. Right.

2 Q. I'm going to hand you what's been marked as
3 Exhibit 3.

4 (Deposition Exhibit No. 3 marked.)

5 Q. (BY MR. DE LA FUENTE) What will be marked as
6 Exhibit 3.

7 Do you recognize Exhibit 3?

8 A. Yes.

9 Q. Okay. And can you tell us what Exhibit 3 is?

10 A. This is the original class action complaint.

11 Q. And this is the complaint filed by Fazzino
12 Investments, LP?

13 A. Right.

14 Q. And I just want you to look at Paragraph 6 on
15 Page 2. Describing that plaintiff is a Texas Limited
16 Partnership and that is Fazzino Investments, LP?

17 A. Right.

18 Q. Okay. And plaintiff owns real property in
19 Robertson County, Texas, and has been injured and harmed
20 by Brazos Valley's wrongful actions. Do you see that?

21 A. Right.

22 Q. I just want to be -- to be clear, the -- the --
23 and your understanding, the only real property we're
24 talking about that's the subject of this complaint is
25 the Highway 6 tract?

1 Do you see that?

2 A. Yes.

3 Q. Okay. And I just want to -- want us to -- to
4 be on the same page, when we're talking about property
5 that -- in the complaint you allege groundwater rights
6 were harmed, et cetera, we're only talking about that
7 69.41-acre Highway 6 tract?

8 A. Right.

9 Q. We're not talking about any other tract?

10 A. No.

11 Q. Okay. All right. I'm going to hand you what's
12 been marked as Exhibit 5.

13 (Deposition Exhibit No. 5 marked.)

14 Q. (BY MR. DE LA FUENTE) Do you recognize
15 Exhibit 5?

16 A. Yes.

17 Q. Okay. What is Exhibit 5?

18 A. Special warranty deed.

19 Q. All right. And what's the date on that deed?

20 A. September 16 of '21.

21 Q. Okay. And it reflects the grantor as being
22 John Charles Fazzino and Mildred B. Fazzino?

23 A. Right.

24 Q. And those are your parents?

25 A. Yes.

1 Q. Okay. And the grantee is the plaintiff here,
2 Fazzino Investments?

3 A. Yes.

4 Q. Okay. Now the date on this deed is September
5 of '21, you had mentioned the land wasn't transferred
6 until 2022?

7 A. I was thinking it was done in January of '22,
8 but this was done in the fall of '21.

9 Q. Okay. I just want to -- again, this is not a
10 memory test, so --

11 A. Right.

12 Q. -- I just want us to be clear.

13 Does this refresh your recollection that
14 this was the date that the deed was transferred?

15 A. Yes.

16 Q. Okay. And I see that it lists a total of -- if
17 you go through three pages -- ten tracts of land.

18 A. Right.

19 Q. And I see Tract 5 being 69.41 acres.

20 A. Right.

21 Q. And that is the tract we're talking about here?

22 A. Yeah, that is the tract we're talking about.

23 Q. Okay. And we are not talking about any of the
24 other ten tracts?

25 A. No.

1 Q. Okay. Did Fazzino Investments, LP, pay
2 anything to John Charles Fazzino and Mildred B. Fazzino
3 for any of this land?

4 A. No.

5 Q. It was a gift transfer?

6 A. Yes.

7 Q. Okay. Do you recall what -- or do you have any
8 knowledge of what the original purchasers, John Charles
9 Fazzino and Mildred B. Fazzino, paid for the land in the
10 early 2000s?

11 A. Offhand, I don't.

12 Q. Sorry about that. Thank you. I was hoping the
13 ice storm would take care of my cedar fever, but alas,
14 it did not.

15 But this deed does reflect the current
16 ownership and status of the Highway 6 tract?

17 A. Yes.

18 Q. Okay. I'm going to hand you what is being
19 marked as Exhibit 6.

20 (Deposition Exhibit No. 6 marked.)

21 THE REPORTER: Sorry.

22 Q. (BY MR. DE LA FUENTE) And I'll represent to
23 you this is a map pulled off the Robertson County CAD
24 site.

25 A. Right.

1 Q. Okay. And he provided to you this map
2 indicating on this 69.41-acre tract that a well
3 producing up to 585 acre-feet of Simsboro water could be
4 put in there?

5 A. I think those are the correct numbers.

6 Q. Okay. And in this conversation, you indicated
7 to Mr. Day that you were considering developing the
8 property for residential purposes, didn't you?

9 A. In the future.

10 Q. Okay. And we can see in more detail that
11 property to the southwest, that adjacent property,
12 developed for residential purposes, right?

13 A. Yes.

14 Q. In that conversation, you discussed possibly
15 either having a well in place that could sell water
16 or -- or granting the rights to such a well to the local
17 water utility Wellborn SUD. Do you recall that?

18 A. Yes.

19 Q. Tell -- tell us what you were -- what you were
20 talking about there.

21 A. There's several ways to approach what we were
22 talking about.

23 Q. Okay.

24 A. If we subdivide it, drill a well, let the rural
25 water system produce the well, supply water to

1 subdivision, any excess water could possibly be used for
2 whatever they need to use it for. There's other
3 subdivisions going in in the area, more water is needing
4 to be produced within rural water systems and within the
5 cities.

6 Q. So this was one possibly for -- for local use,
7 in other words, a well that would be used by the -- by
8 the residential lots on the property and any excess
9 would go into the Wellborn system to serve other
10 customers in the area?

11 A. Correct.

12 Q. So local rural customers?

13 A. Yes.

14 Q. Okay. Did you ever have any conversation with
15 Wellborn about that?

16 A. No.

17 Q. You talked about maybe developing this property
18 for residential purposes in the future. What -- what
19 additional planning and work have you done? And I'm --

20 A. We have- --

21 Q. -- have you sketched outlines, anything like
22 that?

23 A. We haven't done anything like that because
24 we're still waiting on TxDOT to figure out where they're
25 going to put the new highways. Until that's -- until

1 that's actually formatted, we don't -- if it's going to
2 come right through the property, you don't know how to
3 subdivide anything.

4 Q. What highway may be coming through the
5 property?

6 A. I don't know the actual number, it stops at
7 Rogers right now.

8 Q. And where would it go?

9 A. It -- well, it's -- from there, it's supposed
10 to come through Milam County back around into Robertson
11 County, tie into Highway 6, and it's supposed to tie
12 into, what is that, 249 south -- on the south side of
13 Navasota. There's several -- there's several highway
14 projects that are going on in the next 20 years.

15 Q. Has TxDOT provided any potential route maps
16 that show highway going through there?

17 A. They've had meetings, they've provided
18 potential route maps, but nothing set in stone yet.

19 Q. Are there route maps that do go through this
20 property?

21 A. Not at this time that I know of.

22 Q. Okay.

23 A. Everything right now is still to the north of
24 us.

25 Q. How close would the nearest route map put a

1 highway to this property?

2 A. Probably a mile to two miles.

3 Q. To the north?

4 A. Yes.

5 Q. And that would intersect Highway 6?

6 A. Yes.

7 Q. So that would provide additional highway -- or
8 additional highway access to the area around this
9 property?

10 A. Right.

11 Q. And at that point with that additional access,
12 would it be more attractive to develop this property for
13 residential purposes?

14 A. Yes.

15 Q. But you don't know if that's going to happen
16 yet?

17 A. No.

18 Q. Has TxDOT given any idea of when they will
19 settle on a route?

20 A. I haven't heard any definite.

21 Q. Have you heard any general?

22 A. Trying to find -- within the next ten years.

23 Q. Have you undertaken any efforts to value the
24 property that was subdivided?

25 A. No.

1 Q. That's very clever. I had a client do that a
2 couple years ago.

3 So there are a lot of variables that can go
4 into the property value in this area?

5 A. Yes.

6 Q. In looking at those 200-acre tracts, do those
7 include the underlying groundwater?

8 A. Yes.

9 Q. And the underlying -- with underlying
10 groundwater, you found the value being anywhere from --
11 well, you said 200 acres at 6 -- \$6,000?

12 A. Right.

13 Q. Do you know what the value -- do you have any
14 idea of the value of the tract, of the Highway 6 tract,
15 before the district amended its rules back in, say,
16 summer of '23?

17 A. Not on monetary basis.

18 Q. Okay. On what basis?

19 A. With 60 to 75 percent more water availability,
20 your value is obviously going to go up.

21 Q. You have never -- have you quantified that
22 value?

23 A. I have -- I'd have to rely on experts on that.
24 I haven't got into the formulas. All I know is we've
25 been cut 25 percent.

1 Q. Okay. And I am asking about the value of the
2 tract as a whole. This tract includes surface rights
3 and groundwater rights together, right?

4 A. Right.

5 Q. There's nothing that's been carved out?

6 A. No.

7 Q. Okay. So it's all in?

8 A. Yes.

9 Q. And I'm asking about the all-in value. Do you
10 have any information about what the all-in value was
11 before the rule change versus after the rule change?

12 A. No.

13 Q. Okay. I'm going to hand you what's being
14 marked as Exhibit 8.

15 (Deposition Exhibit No. 8 marked.)

16 Q. (BY MR. DE LA FUENTE) I'm going to give you a
17 few minutes to look through Exhibit 8.

18 Do you recognize the documents in
19 Exhibit 8?

20 A. I hadn't -- hadn't really seen them, but looks
21 like it's the --

22 Q. Sorry. It looks like what?

23 A. It looks like it's the appraisal information
24 from the county.

25 Q. And the Highway 6 tract is located in Robertson

1 County, right?

2 A. Yes.

3 Q. And property taxes are paid to Robertson
4 County?

5 A. Yes.

6 Q. Okay. And Fazzino -- as of '21, when the land
7 was transferred, Fazzino Investments, LP, is the entity
8 that pays those taxes?

9 A. Since '21.

10 Q. Okay. All right. On these documents, you can
11 look at the middle bottom, there's a grand summary of
12 the value. Do you see that?

13 A. Yes.

14 Q. Now, that's not the assessed value over on the
15 right, the assessed value is a much lower number. Do
16 you see that?

17 A. Yes.

18 Q. And that's -- this land is in ag production, so
19 ag exemption, right?

20 A. Right.

21 Q. Okay. But under the grand summary, you see
22 that in 2020, the assessed value of the property as a
23 whole was 407,000 and change?

24 A. Yes.

25 Q. All right. And then we turn to the next page.

1 In '21, at the time of -- of the year of the transfer to
2 Fazzino Investments, LP, it was 405,000 and change?

3 A. Yes.

4 Q. All right. And then we roll to the next page,
5 in '22, it was 409,000 and change?

6 A. Yes.

7 Q. And then we roll to '23, and it's 513,000 and
8 change?

9 A. Yes.

10 Q. So it went up over \$100,000 in that year?

11 A. Yes.

12 Q. Did Fazzino Investments, LP, protest tax
13 assessment?

14 A. We've never done a formal protest.

15 Q. Did you do an informal protest on -- on this
16 tract?

17 A. Not on this tract.

18 Q. Okay. And then we go to -- to '24, and it was
19 assessed at 515,000 and change?

20 A. Yes.

21 Q. And this last year, '25, also assessed at
22 \$515,000 and change?

23 A. Yes.

24 Q. And Fazzino Investments, LP, did not contest
25 the value assessed after 2023, did it?

1 A. No.

2 Q. Okay. Paid the taxes, levied as stated?

3 A. Yes.

4 Q. The Highway 6 tract, at the time of the
5 transfer to Fazzino Investments, LP, in '21, was it
6 owned free and clear or -- or was it subject to a
7 mortgage being paid on by your father and mother?

8 A. Free and clear.

9 Q. Did they buy it free and clear or did they
10 finance it?

11 A. I don't know about that.

12 Q. You just know that by '21, they owned it free
13 and clear?

14 A. Yes.

15 Q. Has Fazzino Investments, LP, or -- or anyone,
16 the trust, anyone, considered using or tried to use this
17 tract -- Highway 6 tract as collateral for -- for any
18 loan or potential loan since '21?

19 A. To my knowledge, no.

20 Q. From 2020 to now -- and, well, from 2020 to
21 present, have you -- has Fazzino Investments, LP, or
22 anyone working on behalf of Fazzino Investments, LP,
23 obtained any formal appraisal or valuation of the
24 Highway 6 tract?

25 A. Not that I'm aware of.

1 Q. Had -- for that same period of time, has anyone
2 that you know of obtained an informal appraisal or
3 valuation of the tract?

4 A. Not that I'm aware of.

5 Q. Okay. Has anyone obtained a formal or informal
6 appraisal or valuation of the value of any separate
7 portion of the tract, like just the surface rights or
8 just the groundwater rights?

9 A. Not that I'm aware of.

10 Q. And we just looked at Exhibit 8, the tax
11 appraisals, are you -- are you aware of any other
12 appraisals like that?

13 A. No.

14 Q. Anything that would show us what the value of
15 the property was?

16 A. No.

17 Q. Have you had to provide any valuation of it to
18 anyone to do an accounting of the assets of the trust or
19 Fazzino Investments, LP?

20 A. Not that I'm aware of.

21 Q. And so this is just me -- you understand I need
22 to know what you know and what you don't know.

23 Other than the tax records we looked at,
24 you don't have any evidence at present of the fair
25 market value of the Highway 6 tract as a whole?

1 A. No, I don't.

2 Q. And -- and I'm asking you as a representative
3 of Fazzino Investments, LP. Are you aware of any
4 evidence Fazzino Investments, LP, would have?

5 A. No.

6 Q. We just mentioned a -- a loss of 75 percent of
7 groundwater. Do you -- do you have or know of any
8 appraisals showing the value of that alleged loss?

9 A. No.

10 Q. All right. Let's -- I want to talk a little
11 bit about the amended rules and the effect of those
12 rules.

13 Is it your understanding that the rules for
14 this Highway 6 tract, at least, changed the volume of
15 groundwater and the rate of pumping that the owner can
16 extract per year?

17 A. Yes.

18 Q. Okay. Now it's not your understanding that
19 it's a total cap on the volume of groundwater that can
20 be extracted forever and ever on the property, right?
21 In other words, it doesn't say you can pump 50,000
22 gallons of -- 50,000 acre-feet of water from this
23 property over the life of this property but that's it?
24 It's an annual cap, right?

25 A. Right.

1 with you either because you're obviously not reading the
2 right complaint.

3 Q. (BY MR. DE LA FUENTE) Okay. What royalty,
4 interest or other payment will -- will Fazzino
5 Investments, LP, get pursuant to this lease?

6 MR. COFFMAN: He's not going to answer that
7 question.

8 A. The instruction of my lawyer is I'm not going
9 to answer the question.

10 MR. COFFMAN: He's not going to answer the
11 question. I've given you a lot of latitude on land
12 that's not even a part of this case.

13 Q. (BY MR. DE LA FUENTE) So you're going to
14 follow your lawyer's instruction and not answer the
15 question as to the value that Fazzino Investments, LP,
16 will receive for the sale of groundwater within the
17 district?

18 MR. COFFMAN: Pertaining to tracts of land
19 that are not part of this lawsuit, correct.

20 THE WITNESS: Correct.

21 MR. COFFMAN: Just because you can ask the
22 question doesn't mean you should, and he's not going to
23 disclose this confidential information that has nothing
24 to do with this case.

25 Q. (BY MR. DE LA FUENTE) Has Fazzino Investments,

1 LP, obtained any information about the value of its
2 groundwater on any of its property?

3 A. No.

4 Q. So it doesn't have any information about the
5 value pursuant to the terms of the very lease we're
6 talking about?

7 A. There's no terms yet because there's no --
8 the -- no production, no deal's been made to put the
9 values on.

10 Q. I'm not asking if -- if money has been paid,
11 I'm asking if terms are set. Is there a formula in this
12 lease for when production happens, how much Fazzino
13 Investments will be paid?

14 A. I believe there is a formula.

15 Q. Okay. And this lease and the option has indeed
16 been executed, correct?

17 A. The option has been executed.

18 Q. Did Fazzino Investments approach Upwell or did
19 Upwell approach Fazzino about this transaction?

20 A. I approach -- Fazzino Investments approached
21 Upwell.

22 Q. Okay. When?

23 A. Fall of 2013 or spring of 2014.

24 Q. Ten years before the rule change?

25 A. Just a minute. That -- 14th was the date.

1 A. Okay.

2 Q. What is the smallest acreage?

3 A. 195.

4 Q. 195.

5 And was it your understanding that prior to
6 the rule change, the 6900 -- the 69-acre Highway 6 tract
7 would have been able to obtain a permit for an 1100 GPM
8 well or better?

9 A. Ask that again.

10 Q. Sure. Is it your understanding prior to the
11 rule change, that the Highway 6 69-acre tract would have
12 been eligible for a Simsboro permit of a well at
13 1100 GPM or better rate?

14 A. Prior to the rule change?

15 Q. Yes.

16 A. I never did any investigation on how much water
17 we could develop off of that 69 acres.

18 Q. You never did any investigation how much water
19 you could produce off of that before the rule change?

20 A. No, because it wasn't irr- -- it wasn't an
21 irrigated piece of property.

22 Q. Did you ever make any effort to market or sell
23 the groundwater from underneath the Highway 6 tract at
24 any time?

25 A. Other than when I visited with Mr. Day about

1 what could be produced after the rule changes.

2 Q. So you made no effort to market any groundwater
3 underneath the Highway 6 tract before the rule change?

4 A. Not actually market water, no.

5 Q. Well, anything to -- to possibly market or sell
6 or lease the -- the rights to the groundwater, to any
7 way generate revenue from Simsboro groundwater
8 underneath this, did you pursue any efforts?

9 MR. COFFMAN: Prior to the rule change?

10 MR. DE LA FUENTE: Yes.

11 A. Prior to the rule change, no.

12 Q. (BY MR. DE LA FUENTE) Okay. And after the
13 rule change, you referenced conversation you had with
14 Mr. Day about the residential development and maximum
15 well size?

16 A. Yes.

17 Q. Any other efforts to generate any revenue from
18 the groundwater -- Simsboro groundwater underneath the
19 Highway 6 tract since the rule change?

20 A. I can't recall anything.

21 Q. When did you talk with College Station about
22 possibly obtaining groundwater, groundwater rights from
23 you -- from -- from Fazzino Investments?

24 A. I never talked to College Station.

25 Q. Never?

1 A. No.

2 Q. Do you -- have you ever discussed with any of
3 the neighboring landowners combining acreage under
4 single control, so a larger footprint could obtain a
5 larger well?

6 A. No.

7 Q. Have you ever done any analysis of possible
8 footprints including surrounding acreage to -- to inform
9 you as to people you might want to approach to combine
10 acreage?

11 A. No.

12 Q. So before the rule change, you didn't explore a
13 permit and were not marketing the Highway 6 tract
14 because it had no irrigation purpose, you told us that
15 earlier, right?

16 A. Right.

17 Q. Okay. And afterwards, you haven't explored or
18 tried to market the groundwater as well, right?

19 A. No.

20 Q. Okay. Either as just the 16 -- the 69.41-acre
21 tract or in combination with other tracts, you
22 haven't -- you haven't looked into that either?

23 A. No.

24 Q. But you do know under the rules, larger
25 combined acreage under -- under one control for one

1 conclusion?

2 MR. DE LA FUENTE: I'm asking for facts.

3 Q. (BY MR. DE LA FUENTE) Have they physically
4 invaded your property, as you understand what a physical
5 invasion would be?

6 And I'll give you -- I'll give you a nice
7 example. I mean, if I -- if I cut through your gate and
8 walk onto your land, I physically invaded your property.
9 I'm a trespasser on the surface. I imagine you wouldn't
10 take too kindly of that either.

11 MR. COFFMAN: Well, but that's not the only
12 way you can have --

13 A. That's not the only --

14 MR. DE LA FUENTE: Hold on.

15 A. -- invasion that -- that can be -- that can
16 happen.

17 Q. (BY MR. DE LA FUENTE) I understand. That's
18 why I gave you an example as to one type of physical
19 invasion.

20 I'm asking you if the district -- if the
21 district itself has committed -- if it has physically
22 invaded the Highway 6 tract in any way?

23 A. To the aspect of taking something where we're
24 not treated equally, any other area with the rule
25 changes, yes, we've been invaded.

1 Q. Okay. I understand you believe the rule change
2 invades your right. I'm asking about a physical
3 invasion, not --

4 A. Not a physical invasion, no.

5 Q. Okay. Has anyone else -- are you aware of
6 anyone else physically invading the Highway 6 property?

7 A. Yes, I am.

8 Q. Who?

9 A. I've caught people going through us to steal
10 stuff from the junkyard.

11 Q. There you go.

12 Okay. Are you aware of anyone else
13 physically invading the groundwater beneath the
14 Highway 6 property?

15 A. No.

16 Q. Okay. Just want to get this in there, although
17 I'm going to ask you about that. I'm going to hand you
18 what's been marked as Exhibit 13.

19 (Deposition Exhibit No. 13 marked.)

20 Q. (BY MR. DE LA FUENTE) Can you tell us what
21 Exhibit 13 is?

22 A. Rules of Brazos Valley Groundwater Conservation
23 District.

24 Q. These are -- are you aware these are the
25 current operative rules?

1 MR. COFFMAN: Without looking at them?

2 MR. DE LA FUENTE: That's what I'm asking.

3 A. That's what it says, "last amended."

4 Q. (BY MR. DE LA FUENTE) All right. And your
5 allegations are that the Highway 6 property was harmed
6 by the amendment of Rule 6.1 and 7.1, right?

7 A. Yes.

8 Q. Okay. There was no -- but there was no
9 contract in place to sell water -- groundwater or any
10 interest in groundwater under the Highway 6 tract before
11 the rules changed, right?

12 A. No.

13 Q. There was no other commitment or option to --
14 to acquire, lease, use any such groundwater under the
15 Highway 6 tract before the rules changed?

16 A. No.

17 Q. And Fazzino Investments, LP, had the right to
18 obtain a permit for a larger volume well on the
19 Highway 6 tract before the rules changed, right?

20 A. Yes.

21 Q. All right. I do want to take you back to
22 Exhibit 4, and I'll give you this predicate and your
23 lawyer as well. I'm not -- I'm not -- I'm not trying to
24 be tricky here. I need to know what you -- what Fazzino
25 Investments knows versus what it's going to depend on an

1 of vol- -- the amount of water that could be produced on
2 an annual basis, right?

3 A. Right.

4 Q. But that's not the amount of wat- -- that's not
5 the volume of water total that's underneath the land?

6 A. Right.

7 Q. Okay. And as to the amount of water that's
8 underneath the land or -- or that has been drained by
9 anyone underneath the land, do you have any knowledge
10 other than what your expert will say?

11 A. No.

12 Q. Okay. I have the same question about
13 Interrogatory Number 7, "If -- if you contend that
14 someone has drained or confiscated groundwater, we ask
15 for the identity of who that is."

16 And your answer, again, says "any
17 information will be the result of expert analysis and
18 provided in the expert report."

19 Do you see that?

20 A. Right.

21 Q. Okay. And my question to you is: Do you have
22 any information or knowledge about anyone who has
23 drained or confiscated Simsboro groundwater underneath
24 the land -- underneath the tract, Highway 6 tract, other
25 than what your expert is going to say?

1 A. No.

2 Q. Drilling a -- a well and doing the engineering
3 for and drilling a well costs money, right?

4 A. Yes.

5 Q. Okay. If you were to have done -- well, you've
6 done the engineering on some, say, you know,
7 1,290-acre-foot wells, for example, in the permits in
8 Exhibit 9, I believe, how much was the engineering cost
9 for each of those wells?

10 A. I don't recall right offhand.

11 Q. Do you have a ballpark?

12 A. I'm thinking it was, like, \$1,500 a permit.

13 Q. Okay. And if you were to drill your own
14 high-volume well, that would cost a significant sum of
15 money, wouldn't it?

16 A. Yes.

17 Q. Have any idea how much that would be?

18 A. I've been told up to a million dollars, maybe
19 more.

20 Q. Okay. And then operating it annually and
21 maintaining it, that costs more money, right?

22 A. Yes.

23 Q. Any idea how much a -- you know, again, a --

24 A. No, I don't have any idea what size pumps, what
25 size motors. There's no way to know that until you get

1 Q. Okay. There is a range of costs involved
2 there, it's not immaterial. It's -- it's actual money,
3 right?

4 A. Yeah.

5 Q. Okay. Have you done any analysis of what
6 those -- any of those costs would have been for the
7 Highway 6 tract before September 14, 2023?

8 A. No.

9 Q. Have you gathered any information or done work
10 to determine the costs for the 584-acre-foot well that
11 could be allowed on the property after September 14,
12 2023?

13 A. No.

14 Q. The question is going to seem obvious, but I
15 need to -- I need to ask it.

16 You indicated you haven't undertaken any
17 actual efforts to market or sell any interest in the
18 groundwater underlying the Highway 6 tract, right?

19 A. No.

20 Q. So you haven't spent any money in doing so?

21 A. No.

22 Q. Okay. In fact, all in on possibly developing
23 the groundwater on this tract other than this
24 litigation, you haven't spent anything in furtherance of
25 that?

1 A. No.

2 Q. And have you spent any money on this
3 litigation?

4 A. No.

5 Q. In looking at -- you looked at Exhibit 7,
6 the -- the drawing you asked Mr. Day to do of the well
7 footprint and permissible amount under the rules, that
8 is a well that could be drilled and produced under the
9 current rules, right?

10 A. Yes.

11 Q. Okay. And, well, you were discussing it in the
12 context of possible residential use or connection with
13 Wellborn SUD, right?

14 A. Yes.

15 Q. Okay. So -- so that well could have -- you
16 could have a Simsboro well on this property that would
17 have some purpose and use, right?

18 A. Yes.

19 Q. Okay. And, of course, the surface estate has
20 purpose and use, right?

21 A. Yes.

22 Q. It has agricultural use today?

23 A. Yes.

24 Q. And it, as you've explored it, could have
25 additional use or value if it was developed for

1 residential purposes?

2 A. Right.

3 Q. And who knows, depending on what happens with
4 the road, it could have some other use?

5 A. Right.

6 Q. It has highway frontage, right?

7 A. Yes.

8 Q. I asked you about whether you'd done anything
9 with any of the landowners near the Highway 6 tract
10 about, you know, grouping together the property for --
11 for possibly marketing groundwater and you indicated you
12 haven't had those conversations?

13 A. No.

14 Q. Okay. When the rules were maybe heading for
15 amendment, did you talk with any of those landowners
16 about -- about the pending rule change and what it might
17 mean?

18 A. No.

19 Q. Did you talk to any of them about whether the
20 rule change was -- was unlawful or would be a taking of
21 your property?

22 A. No.

23 Q. Did you talk to any other landowners within the
24 district about whether the rule change was going to be
25 harmful, unlawful or be a taking to your property?

1 from obtaining necessary groundwater production permits
2 from defendant." Right?

3 A. Right.

4 Q. That's your answer.

5 We've already discussed the fact that you
6 didn't make any efforts to develop, sell or market the
7 groundwater for the Highway 6 tract before the rule
8 change, right?

9 A. Right.

10 Q. You didn't make any effort afterwards, right?

11 A. Right.

12 Q. And there is a -- a possible use of that
13 groundwater such as a Wellborn SUD or the residential
14 development, right?

15 A. Right.

16 Q. Okay. I do want to take us back to Exhibit 4
17 and your supplemental responses. And on Page 3 of that
18 Interrogatory Number 2. This Interrogatory Number 2
19 asks for each tract of land identified in your response
20 above, state the value of each such tract and the use of
21 which it's currently put, agricultural, industrial,
22 residential, et cetera. Do you see that?

23 A. Yes.

24 Q. Okay. And your response was that plaintiff
25 currently uses the 69.41-acre tract for agricultural

1 purposes and then plaintiff does not have sufficient
2 knowledge or expertise to place a value on the
3 groundwater under the property.

4 And I want to put a finer point to that.
5 At present, you don't have any knowledge of the value of
6 the property as a whole other than the tax appraisal
7 records we've seen or any separate estate of the
8 property, the surface or the groundwater, on their own,
9 right?

10 A. Right.

11 Q. Okay. Okay. I do want to ask regarding the
12 supplemental responses, Number 4, Exhibit 4, the
13 Interrogatory Number 8. Still on Page 7 of Exhibit 4,
14 the very bottom.

15 "Identify any investment or expenditure of
16 funds by both the nature and character of the
17 expenditure and the amount spent made by Fazzino in
18 selling, marketing, developing or producing groundwater
19 or attempting to do so including groundwater in place
20 associated with the real property, which is the
21 Highway 6 tract."

22 Do you see that?

23 A. Yeah.

24 Q. Now you refer back to response to Interrogatory
25 Number 4, which references the conversation with David

1 Lynch of Upwell regarding the prospects of including the
2 69.41-acre tract. We talked earlier you mentioned that
3 the 69.41-acre tract had not been included in the
4 conversation with Mr. Lynch at all?

5 A. I've never spoke with David Lynch about
6 including 69.4.

7 Q. Okay. And as we've already discussed, you
8 don't have any specific or particular investments or
9 expenditure of funds trying to market the groundwater
10 under 6 -- under that --

11 A. No.

12 Q. -- Highway 6 tract?

13 A. No.

14 Q. Okay. Here's what's being marked as
15 Exhibit 15.

16 (Deposition Exhibit No. 15 marked.)

17 Q. (BY MR. DE LA FUENTE) Do you recognize
18 Exhibit 15 as Responses to Defendant's Second
19 Interrogatories?

20 A. Yes.

21 Q. Okay. I'm going to ask you about Interrogatory
22 Number 10, which is on Page 5. And -- and I asked you
23 the question about the subject matter before, but I just
24 need to ask it in the context of this particular
25 interrogatory about who is -- if there's anyone draining

1 Q. Okay. And that is indeed the only tract you're
2 referencing in Paragraph 6 of your complaint, right?

3 A. Right.

4 Q. Okay. Okay. Request for Admission Number 7 at
5 the bottom of that page, "Admit that you did not have
6 any contract in place with any party for the sale by you
7 of Simsboro groundwater -- aquifer groundwater
8 underlying any real property referenced in Paragraph 6
9 of Plaintiff's Original Class Action Complaint before
10 September 14, 2023."

11 Do you see that?

12 A. Yes.

13 Q. So, again, we're just talking about the
14 Highway 6 tract --

15 MR. COFFMAN: Okay.

16 Q. (BY MR. DE LA FUENTE) -- right?

17 A. Right.

18 Q. That's the only one iden- -- referenced in
19 Paragraph 6, right?

20 A. Right.

21 Q. Okay. And isn't it true you did not have any
22 contract in place with anyone for the sale by any -- the
23 sale of any of that groundwater before that day?

24 A. I did not have any con- -- any contract.

25 Q. Okay. So this should be admitted instead of

1 denied, right?

2 A. Yes.

3 Q. Okay. All right. And then I think -- I'm
4 going to ask about the next -- Request for Admission
5 Number 8. Also -- these are all asking to admit that
6 you didn't have a contract in place for groundwater --
7 Simsboro groundwater, and it's asking for underlying any
8 of the real property referenced in Paragraph 6, which,
9 again, as you've told us is just Highway 6 tract, right?

10 A. Go ahead.

11 Q. Sure. The property referenced in Paragraph 6
12 of your class action complaint is just the Highway 6
13 tract, right?

14 A. Right.

15 Q. Okay. And you didn't have -- this says "Admit
16 that you did not have any contract in place with any
17 party for the sale of ground -- Simsboro groundwater
18 from September 14th to present for that tract," right?

19 A. Correct.

20 Q. And you do not have any such contract?

21 A. I do not.

22 Q. Okay. So this should also be admitted?

23 A. Yes.

24 Q. Okay. And Number 9 is just broadly "Admit that
25 you don't have any contract in place with any party for

1 the sale of that groundwater underlying any of the real
2 property in Paragraph 6, which is the Highway 6 tract."

3 You don't have any such contract, do you?

4 A. No.

5 Q. Okay. So this should also be admitted?

6 A. Yes.

7 Q. Okay. And Number 10, asks the
8 pre-September 14, 2023, question a little differently,
9 "Admit that you didn't have any contract in place with
10 any party for the right of that party -- that party to
11 lease, own or develop Simsboro groundwater underneath
12 the Highway 6 tract before September 14th."

13 And you've told us you did not have any
14 such contract?

15 A. Right. Yeah.

16 Q. So this should also be admitted?

17 A. Yes.

18 Q. Okay. And you have not applied for any permit
19 for a Simsboro well on the Highway 6 tract since
20 September 14, 2023, that the district has denied or
21 declared administratively incomplete or anything like
22 that?

23 A. I have not applied for a permit on that
24 particular tract in any form or fashion before or after
25 rule changes.

1 Mr. Richard L. Coffman..... 00:00:00

2 Mr. Jose E. de la Fuente..... 02:29:47

3 That pursuant to information given to the
4 deposition officer at the time said testimony was taken,
5 the following includes counsel for all parties of
6 record:

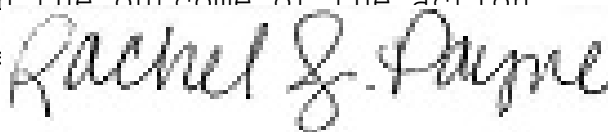
7 Mr. Richard L. Coffman, Attorney for Plaintiff
8 FAZZINO INVESTMENTS, LP for itself and all others
9 similarly situated

10 Mr. Jose E. de la Fuente, Attorney for Defendant
11 BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT

12 That \$_____ is the deposition officer's
13 charges to the Defendant for preparing the original
14 deposition transcript and any copies of exhibits;

15 I further certify that I am neither counsel for,
16 related to, nor employed by any of the parties or
17 attorneys in the action in which this proceeding was
18 taken, and further that I am not financially or
19 otherwise interested in the outcome of the action

20 Certified to by me



21

Rachel J. Payne Texas CSR 8399

22

Expiration Date: 09/30/2026

23

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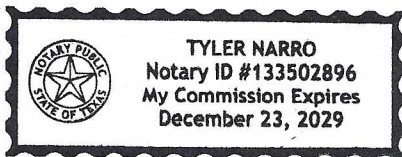
I, JOHN CHARLES FAZZINO II, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

John Charles Fazzino II
JOHN CHARLES FAZZINO II

THE STATE OF Texas)
COUNTY OF Robertson)

Before me, Tyler Narro, on this day personally appeared JOHN CHARLES FAZZINO II, known to me (or proved to me under oath or through TX01:12333031) (description of identity card or other document)) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3rd day of March, 2026.



Tyler Narro
NOTARY PUBLIC IN AND FOR
THE STATE OF Texas
COMMISSION EXPIRES: 12.23.29