

**Application of  
RH<sub>2</sub>O LLC  
To The  
Brazos Valley Groundwater Conservation District  
For Drilling and Production Permits**

**Applicant Point of Contact:**

Nick Lutz, Manager  
8529 Edinburgh Court  
Montgomery, Texas 77316  
Ph: (936) 333-0993

**Attorney Point of Contact:**

McCarthy & McCarthy LLP  
Attn: Ed McCarthy  
1122 Colorado, Suite 2399  
Austin, Texas 78701  
Tel.: (512) 904-2313  
Cell: (512) 426-7138  
Fax: (512) 692-2826  
E-mail: [ed@ermlawfirm.com](mailto:ed@ermlawfirm.com)

**Filed August 15, 2023**

## RH<sub>2</sub>O LLC Permits

### Introduction

**A. Production Request:**

**RH<sub>2</sub>O LLC, a Texas limited partnership** (the “Applicant”) files this application to drill 5 wells to be completed in the Simsboro Formation for the purpose of producing up to 8,130 acre-feet per annum cumulatively from the 5 wells. The purpose for which production is requested includes all beneficial purposes as those terms are defined in Section 36.001(9), Texas Water Code, and BVGCD Rule 1.1(45).

**B. Well Names & Locations:**

Applicant’s proposed wells are identified by name as indicated in the Table 1.0 below. The location of each of the wells is depicted on the Map appended hereto as an Exhibit as indicated in the same Table 1.0.

**Table 1.0**

Well Name	Location Map Exhibit
RH <sub>2</sub> O LLC No. 1	Ex. No. 1 - Figure Nos. 1-6f, 8
RH <sub>2</sub> O LLC No. 2	Ex. No. 1 - Figure Nos. 1-6f, 8
RH <sub>2</sub> O LLC No. 3	Ex. No. 1 - Figure Nos. 1-6f, 8
RH <sub>2</sub> O LLC No. 4	Ex. No. 1 - Figure Nos. 1-6f, 8
RH <sub>2</sub> O LLC No. 5	Ex. No. 1 - Figure Nos. 1-6f, 8

**C. Third-Party Contracts:**

At this time Applicant does not have any contracts for use of the requested beneficial purposes other than domestic and livestock use, agricultural uses and recreational uses. Accordingly, Applicant proposes the inclusion of a special condition in its permit that before it produces any groundwater from any of the 5 wells, that Applicant provide the District with written confirmation that Applicant has a written agreement for such beneficial purposes, including a written, signed commitment from the party that will be making use of the groundwater produced from Applicant’s wells for any of such beneficial purposes, if the user is other than the Applicant, that commits the third-party user to the following:

- 1) Dedication of the use of the groundwater produced to the beneficial purpose for which the groundwater is authorized to be used without waste; and

- 2) Conservation of the groundwater in accordance with the terms of the permit, any adopted water conservation and drought management plans, as well as the rules and any applicable orders adopted by the District during the term of the Permit; and
- 3) Commitment to follow all other applicable rules, statutes and orders of the District, including its enabling legislation and Chapter 36, Texas Water Code.

**D. Location of Use/No Export:**

At this time, Applicant seeks only authorization to use the groundwater permitted to be produced for beneficial purposes within the boundaries of the District (Brazos and Robertson Counties, Texas). Applicant is not seeking authority to export the groundwater produced for beneficial use outside of the District. In the event Applicant prospectively determines to produce groundwater for beneficial purposes outside of the District, the Applicant will make application to the District for an appropriate amendment authorizing such export if the need arises.

**E. Well Spacing:**

Applicant retained the services of a noted hydrogeologic firm, The Thornhill Group, Inc. (“TGI”), led by Mike Thornhill, P.G., President. In preparation of this Application, Mr. Thornhill engaged in discussions with the District’s General Manager, Alan Day, regarding the spacing of groundwater wells pursuant to current District Rules 6.1, 6.2 and 7.1, Mr. Day explained his hope to pursue modifications to those rules which would increase the restrictive requirements in the current rules for both (i) the minimum “setbacks” of wells from a permittee’s property lines, and (ii) the spacing distance between new wells and existing wells completed in the same aquifer as Applicant’s proposed wells on neighboring properties. Pursuant to Mr. Thornhill’s discussions with Mr. Day, Applicant proposes to adhere to Mr. Day’s requested setback and spacing criteria, which is summarized as follows:

The BVGCD Rules currently regulate the spacing and production of groundwater from groundwater wells (completed in the Simsboro Formation) based on the following:

- 1) Wells must be spaced from the nearest boundary of the property legally assigned to the well (*see* BVGCD Rule 7.1) a distance equal to the well’s proposed average pumping rate multiplied by 0.5 (*see* BVGCD Rule 6.1); and,
- 2) Wells must be spaced from ***any other permitted or registered well completed in the Simsboro Formation*** a distance equal to the average production rate or capacity of the well multiplied by one (1). The BVGCD Rules provide no requirement that distance for spacing between wells must be confined to the property “legally assigned” to the well (*see* BVGCD Rule 6.1). In fact, the current BVGCD Rules provide for exceptions to the well-to-well spacing rules for wells on the same property or if waivers are provided by landowners of nearby wells (*see* BVGCD Rule 6.2). In fact, the Rules state that the BVGCD may waive the requirement for spacing between wells *if* the permit applicant provides evidence that the closer spacing will not cause increased drawdown on nearby wells. *Id.*; and,
- 3) The amount (*i.e.*, acreage) of land “legally assigned” to a permitted well is based primarily on the annual average pumping rate of the subject well (which is also the well spacing

radius) (*see* BVGCD Rule 7.1(c)). The Rule also states: “[M]ore than one well may be assigned to the production acreage at the discretion of the Board as long as the spacing requirements are met.”

The required spacing from the Permittee’s property line is a straightforward rule and is demonstrated on the attached maps by the smaller diameter **red circles** around each proposed well site. *See Exhibit 2* Well Spacing Maps.

Based on Mr. Thornhill’s discussions with Mr. Day, his objective is to achieve well-to-well spacing that is confined to the “property legally assigned” to the well (*see* BVGCD Rules 1.1(33), 6.1). To achieve Mr. Day’s objective, each of the proposed wells have been sited on Applicant’s property so that the well-to-well spacings do not extend beyond the property boundaries of the land assigned to each well.

The well-to-well spacings are represented on the attached map by **black circles** surrounding each well. *See Exhibit 2* Well Spacing Map. As Mr. Day’s desired well spacing limitations are conservative, and restrict the capacity of each well, the Applicant is applying for less than the maximum volume of groundwater that would otherwise be available to the Applicant from the Simsboro Formation.

Applicant’s implementation of the more restrictive well siting criteria preferred by Mr. Day is reflected in the well siting plats appended to this Application as Applicant’s **Exhibit No. 2**. The respective “red” and “black” circles around each proposed well site depicted on Applicant’s **Exhibit No. 2**, follow the criteria summarized above.

**Notwithstanding the fact that neither the District’s current Rules (BVGCD Rules in Sections 6 or 7), nor its enabling legislation<sup>1</sup> or any provision of Chapter 36, Texas Water Code authorizes the District, or requires an Applicant to secure authorization, permission or any form of consent to produce groundwater from a groundwater well drilled on and completed within the boundaries of a permittee’s property, as recognized by the Texas Legislature in Section 36.002(b), Applicant’s voluntary agreement to adhere to Mr. Day’s preferred well setback and spacing criteria described in Section E. (Well Spacing) of this Application negate any need for the Applicant to seek or obtain any such waiver, authorization, permission or consent.**

**F. Dedication to Use for a Beneficial Purpose:**

Applicant acknowledges and agrees to dedicate all groundwater produced from the groundwater wells sought to be permitted pursuant to this Application to a beneficial purpose without waste.

**G. Authority to Drill, Maintain, Operate, Produce and Beneficially Use Groundwater Sought to be Permitted Pursuant to this Application:**

Applicant is the owner of fee title to the Groundwater Estate underlying the real property described in the Deed attached to the Applicant’s Affidavit. *See* Appendix “B.” The surface estate

---

<sup>1</sup> Tex. Spec. Dist. Local Laws Code Ch. 8835.

upon which RH<sub>2</sub>O LLC Well Nos. 1, 2, 3, 4, and 5 are proposed to be drilled is owned by John C. Lutz Jr. *aka* “Bo Lutz,” Mary Kathryn Lutz Sustaire, and Nickolas Lutz (the “Lutz’s Siblings”). The Lutz’s Siblings have conveyed the Groundwater Estate to the property on which the proposed 5 wells are to be drilled pursuant to the Application to RH<sub>2</sub>O LLC, a Texas limited liability company, with rights to access and use the Surface Estate to develop the underlying groundwater, including the Simsboro Aquifer. *See* Appendix “B.” Accordingly, Applicant has the legal right to construct, maintain and operate the five groundwater wells and appurtenant facilities contemplated by this Application, pursuant to its title in and to the Groundwater Estate underlying the respective tracts identified in the Special Warranty Deed attached to the Applicant’s Affidavit included as Appendix “B” to this Application.

**H. Confirmation of Commitment to Conserve Groundwater, and Adhere to Permit Terms and Conditions, and the Rules and Orders of the District, its Enabling Legislation and Chapter 36, Texas Water Code:**

Applicant agrees to comply with and adhere to the applicable and lawful terms and conditions of the Permit requested in this Application, together with the District’s Rules, Orders and enabling legislation and Chapter 36, Texas Water Code.

**I. Aquifer Testing:**

Applicant has included as **Exhibit No. 1, a copy of TGI’s Aquifer Evaluation Report, dated July 25, 2023**, assessing local aquifer characteristics and evaluating the potential influence production from the 5 wells contemplated by this Application may have on other groundwater users within the jurisdiction of the District. Prior to producing groundwater from any groundwater well authorized by the Permit contemplated by this Application, Applicant will conduct the District mandated aquifer testing, and will (i) provide the District of the date of such testing, and (ii) provide the District with a copy of the Aquifer Testing Report to be prepared by Applicant’s hydrogeologic Consultant, TGI, when complete. (*see* BVGCD Rule 8.7).

**J. District’s Application Form & Application Fee:**

Applicant has completed the District’s prescribed (i) form Drilling and Production Application and included it as an Appendix hereto (Appendix “A”), and (ii) form Affidavit (Appendix “B”). Also included with this Application is Check No. 2258, payable to the District in the amount of Five Hundred Dollars (\$500.00). This amount reflects the Applicant’s request to permit the drilling of 5 wells at the District’s scheduled fee of One Hundred Dollars per well (\$100.00/well x 5 wells). A copy of Check No. 2258 is also appended hereto as Applicant’s **Exhibit No. 3** for future reference.