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June 17, 2024

***Via hand delivery and email*: aday@brazosvalleygcd.org**
Mr. Alan M. Day, General Manager
Brazos Valley Groundwater Conservation District
112 West 3rd Street
Hearne, Texas. 77859

Re: Request of City of Bryan, City of College Station, and Brazos County for a Contested Case Hearing on Transport Permit Applications: BVTP-002, BVTP-003, BVTP-004, BVTP-005, BVTP-006, BVTP-007, BVTP-008.

Dear Mr. Day:

Please accept this letter as the request of the City of Bryan, City of College Station, and Brazos County pursuant to Texas Water Code §§ 36.4051 and 36.415, and Brazos Valley Groundwater Conservation District (District) Rule 14.3.5 for a contested case hearing on the following transport permit applications (the Applications) included in the Notice for Public Permit Hearing scheduled for June 18, 2024:

BVTP-002 (RH2O, LLC and UW Brazos Valley Farm, LLC)
BVTP-003 (Clifford A. Skiles, III and UW Brazos Valley Farm, LLC)
BVTP-004 (James C. Brien and UW Brazos Valley Farm, LLC)
BVTP-005 (L. Wiese Moore, LLC and UW Brazos Valley Farm, LLC)
BVTP-006 (Fazzino Investment, LP and UW Brazos Valley Farm, LLC)
BVTP-007 (Ely Family Partnership, LP and UW Brazos Valley Farm, LLC)
BVTP-008 (Cula d'Brazos, LLC and UW Brazos Valley Farm, LLC)

Background

The referenced transport permit Applications, as filed by in-District landowners and UW Brazos Valley Farm LLC (UWBVF), a Delaware Limited Liability Corporation, seek to authorize the transport of water produced from Simsboro Aquifer wells in the District that are authorized to produce up to a combined maximum of 57,718 acre-feet per year of groundwater. The water produced from these wells is proposed to be combined with UWBVF's existing authorization to produce and transport up to 49,999 acre-feet per year of groundwater from the District, with a transport cap of 100,000 acre-feet per year.

The Cities of Bryan and College Station own and operate public drinking water systems serving the majority of the population of the District. Collectively the Cities currently serve more than 200,000 people in the District. As set out in the 2021 Region G Water Plan (Region G Plan), Bryan and College Station will be providing drinking water to more than 400,000 people by 2070. Nearly all of the drinking water provided by the Cities comes from groundwater from the Simsboro Aquifer produced from wells located in and permitted by the District as historic use or operating permits. As will be discussed herein, the granting of these Applications would cause significant reductions in artesian head at the Cities' wells that will impose significant costs that will result in increases in the retail rates the Cities charge for retail water service.

Brazos County is a subdivision of the State of Texas responsible for carrying out the administrative and judicial functions for the State as well as the local government responsibilities for county residents living outside of municipalities. Brazos County is located wholly within the boundaries of the District. Brazos County currently has a population in excess of 230,000 and is the home of Texas A&M University. As set out in the Region G Plan, Brazos County's population is expected to more than double by 2070, with a forecast population of more than 480,000. Brazos County, along with the Cities of Bryan and College Station, have invested in recruiting industries and employers, including defense, life sciences, manufacturing, and other industries, to locate in the District. An essential element to the attracting industries to the District and promoting economic growth is the availability of sufficient, and economically priced, water.

Standing to Request and Participate in a Contested Case

Under the District Rules 14.3 and 14.3.5, the Board should grant a contested case hearing on a permit application if requested by a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and who is affected by a permit application in a manner not in common with the general public. The scope of the District's regulatory authority is set out, in part, in Section 36.122 of the Water Code, which provides that when deciding whether to issue a transportation permit and what provisions to include in such a permit, a groundwater conservation district board must consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and

(3) the approved regional water plan and approved district management plan.

Bryan, College Station, and Brazos County each have legal rights, duties, privileges, powers, or economic interests that are within the District's regulatory authority and are potentially affected by the Applications in ways not common with the general public. The following analysis will identify these interests and explain the nexus between the interests and the District's regulatory authority and how those interests could be affected by the permit Applications.

TWC § 36.122(f)(1) – Balancing of Water Availability in the District and Receiving Area

When considering whether to issue a transport permit, TWC § 36.122(f)(1) requires that the District evaluate the availability of water in the District and in the proposed receiving area. The availability of water is the foundation of economic viability in Texas. Without available water, there can be no economic growth. The purpose of the evaluation required by this section is to allow the District to consider and balance the adverse economic effects on those residing within the District versus the economic gains in the receiving area --in other words, the District is required to balance the need for use of the groundwater in the District with the needs for use of the groundwater in the receiving area.

Bryan, College Station, and Brazos County all have economic interests linked to the continued availability of sufficient, reasonably priced, groundwater within the District's geographic area that will be adversely affected by these permits, if issued. If the District fails to appropriately consider the availability of water in the District when deciding whether to issue the proposed permits (and what conditions to include in those permits), the economy of the District could suffer significantly as industries and accompanying populations choose to move to areas with a more robust and lower-cost water supply. As entities dependent upon property and sales taxes for revenues, the Cities and the County benefit economically from a robust economy and suffer economically from economic downturns. Additionally, the Region G Plan and the District Management plan show that Bryan and College Station will need approximately 33,000 acre-feet of additional water supply by 2070.[1] The District must consider that need as well when deciding whether to issue the proposed permits.

Curiously, while each of the Applications discuss the availability of water in Robertson County, the Applications contain no discussion of the availability of water in Brazos County or the availability and need for water in Brazos County during the requested permit term. The Applicants seem to have overlooked the fact that the District is composed of both Brazos and Robertson Counites, and the District's analysis under TWC § 36.122 must include analyzing the effects of the proposed permits on both counties, not just Robertson County where the wells in the permit applications would be located. This deficiency in the permit applications is noted in the evaluation of these permits performed for the District by Advanced Groundwater Solutions, LLC ("AGS").[2]

Given the potential adverse economic effects within the District and the deficiencies in the Applications, a contested case hearing is needed to ensure that the District is presented with a complete and balanced view of the relevant facts before it makes its decision on the Applications. In addition to providing information regarding the availability of water in Brazos County during the term of these permits, the Cities and the County intend to develop facts showing the economic benefits within the District from the use of groundwater within the District versus the benefits within the District from transporting groundwater outside of the District.

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[1] Region G Plan, at 5.3; BVGCD Management Plan at Appendix B-4.
[2] *Technical Memorandum,* Advanced Groundwater Solutions, LLC ("AGS Study) at 4 (May 24, 2024).

TWC § 36.122(f)(2) – Adverse Effects on Existing Permit Holders

Next, TWC § 36.122(f)(2) gives the District the authority to consider and address projected adverse effects of a proposed transfer on existing permit holders. Bryan and College Station are both existing permit holders who will be affected by the drawdown in water pressure expected to result from the pumping associated with these permit Applications. A list of Bryan and College Station's (the Cities') permitted groundwater wells is included with this request as **Exhibit 1**. As existing permit holders that will be adversely affected by these Applications, the Cities have standing to request a contested case hearing.

The exact amount of drawdown at the Cities' wells cannot be determined from the Applications because the Applications fail to include a complete hydrologic evaluation report as required by District Rule 8.4(b)(7)(B).[3] The Applications contain evaluation reports regarding the effects of pumping from the wells associated with the individual Applications, but none of the Applications contained a hydrologic evaluation report regarding the cumulative effects of pumping 57,718 acre-feet per year from all of the wells associated with the combined Applications. The Attachment C portion of each of the Applications clearly states that UW Brazos Valley Farm LLC (UWBVF) will be the entity responsible for the transportation of the groundwater from the District, and UWBVF is the co-Applicant for all of the Applications. As such, under Rule 8.4(b)(7)(B)(3), the Applications should have included an estimate of artesian head drawdown that could be caused by pumping from all associated wells at the permitted rate totaling 57,718 acre-feet per year for one year, ten years, and twenty years at a distance of ten miles from the wells. Had this information been submitted as part of the Applications, the Cities would be able to demonstrate the magnitude of the drawdown on their existing permitted wells. Even without this information, the limited hydrologic evaluations in the individual Applications show drawdown of artesian head at the Cities wells.[4]

Additionally, the AGS Study performed by the District shows the significant impact anticipated to occur if the requested transport permits are granted. As shown in the study performed by AGS for the June 18, 2024, public hearing on the Applications:

- The desired future condition (DFC) for the Simsboro Aquifer established by the Board through the District's Management plan as drawdown of artesian head of no more than 262 feet by 2070 will be exceeded by 2036;[5]

- Drawdown in 2070 will increase from the current DFC of 262 feet to 408 feet.[6]

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[3] Rule 8.4(b)(7)(B) requires a study of the projected effect of "the proposed withdrawal" on the aquifer and existing permit holders. In this case that proposed withdrawal for transport is 57,718 acre-feet per year.
[4] See, for example, the Application by Fazzino Investments, Attachment C, page 50-52 show that its wells alone add 19 and 20 feet of drawdown respectively to the Bryan and College Station wells.
[5] AGS Study at 18. Additionally, as BVGCD's Management Plan notes at 5.D "it is incumbent upon the District to remain in compliance with the adopted DFC".
[6] *Id.*

- Drawdown in hydraulic artesian head in the vicinity of Lake BTU (the area in which the Cities' wells are located) will be on the order of 460 to 500 feet.[7] This amount of drawdown will substantially increase pumping costs at the Cities' wells.

- All of the Cities' wells (located around Lake BTU) will need to be redrilled or have their pumps lowered by 2059.[8]

These impacts will have real world effects on the Cities. The Cities have received engineering estimates that the costs for re-drilling a municipal well range from a low of $4.3 Million to a high of $20 Million per well at today's prices. Additionally, electricity costs are anticipated to increase by more than 70% at today's prices to lift the water from greater depths.

The fact that these wells associated with the pending transport permit Applications have previously been granted operating permits by the District does not alter the potential adverse effects on the Cities wells or the Cities' standing to request a contested case hearing because the pumping permitted to the Applicants' wells are unlikely to be realized without the transportation authorization sought by the pending Applications. Without the transportation permits, the wells associated with the UWBVF project would not be pumped anywhere near the same level that they would be if the transportation permits are granted.

Collectively, these permit Applications (along with wells associated with BVTP-001) seek to authorize the transport of 100,000 acre-feet per year of water out of the District from wells that are currently permitted to pump 107,717 acre-feet per year of water. As clearly shown in the Region G Plan and the District's Management Plan, there currently is no anticipated beneficial use inside the District for this much additional pumped and permitted water now or within the 50-year planning cycle[9]. Thus, it is the transport and beneficial use of the groundwater outside of the District that will result in the pumping that will affect the Cities' wells.

As owners of groundwater wells that will be affected by the pumping made possible by the transport permits sought by these Applications, the Cities of Bryan and College Station have standing to request a contested case hearing. Given the deficiencies in the Applications regarding the cumulative effect of the Applications on Cities' wells and the significant effects revealed in the District's modeling, a contested case hearing is needed to ensure that the District is presented with a complete view of the relevant facts before it makes its decision on the Applications.

TWC § 36.122(f)(3) – Approved Regional Water Plan and District Management Plan

Finally, TWC § 36.122(f)(3) gives the District the authority to consider and address whether the pumping and transport of the groundwater associated with these permit Applications is consistent with the approved Region G Plan and the approved District management plan. Bryan, College Station, and Brazos County have legal and economic interests in the long-term planning associated with the Region G water plan and the District's management plan. For example, Bryan

[7] AGS Study at 25.
[8] AGS Study at 28-30.
[9] Region G plan at 5.3 (Brazos County Water Supply Plan) and 5.28(Robertson County Water Supply Plan). Also See BVGCD Management Plan at Appendix B4.

has a low-interest SWIFT loan from the TWDB to finance the planning, acquisition, design, and construction of an aquifer storage and recovery (ASR) project. This loan was based on the planning forecasts from the Region G Plan and the District's management plan.

The UWBVF project is not consistent with the applicable planning documents, and if authorized, this project would significantly disrupt local governmental entities abilities to rely on and properly plan water needs for the future. The Region G Plan recommended water strategies for the City of Georgetown do not include importing water from the District.[10] Georgetown's strategies rely primarily on demand reduction and the development of additional surface water supplies. On the other hand, the Region G Plan recommended strategies for Bryan and College Station call for the development of additional groundwater supplies within the District.[11] The development of additional groundwater supplies for Bryan and College Station is supported by the District's determination of the Modeled Available Groundwater (MAG) within the District. Based on the current District management plan, the MAG for the District in 2069 from the Simsboro Aquifer is less than 100,000 acre-feet per year. The production associated with the UWBVF project alone exceeds the District's MAG. The District's authorization of pumping in these amounts (pumping that can only be realized if transported out of the District) would jeopardize the viability of Bryan and College Station's water supply strategies.

Bryan, College Station, and Brazos County all have legal rights, duties, privileges, powers, and economic interests in ensuring the maintenance of comprehensive, bottom-up, regional water planning. As governmental entities investing public funds in long-term water projects, they need assurance that these investments are prudently based on the planning process. A contested case hearing is needed to ensure that the District is presented with a complete view of the relevant facts before it makes its decision on the Applications.

Conclusion

On behalf of the Cities of Bryan and College Station and Brazos County, we have been authorized to request, and do request, that the District hold a contested case hearing on the Applications.

Respectively submitted,

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Attorneys for City of Bryan, City of College Station, and Brazos County

[10] Region G plan at 5.36.7.
[11] Region G plan at 5.3.1 and 5.3.2.

EXHIBIT 1
Cities of Bryan and College Station
List of Simsboro Wells

City of Bryan Wells

Well ID	BVGCD Permit No.	Aquifer
COB Well #10	BVHU-0003	Simsboro
COB Well #11	BVHU-0004	Simsboro
COB Well #12	BVHU-0005	Simsboro
COB Well #13	BVHU-0006	Simsboro
COB Well #14	BVHU-0007	Simsboro
COB Well #15	BVHU-0008	Simsboro
COB Well #16	BVHU-0009	Simsboro
COB Well #17	BVHU-0010	Simsboro
COB Well #18	BVDO-0003	Simsboro
COB Well #19	BVHU-0041	Simsboro
COB Well #20	BVDO-0354	Simsboro
COB Well #21	BVDO-0355	Simsboro
COB Well #22	BVDO-0356	Simsboro
COB Well #23	BVDO-0357	Simsboro

City of College Station Wells

Well ID	BVGCD Permit No.	Aquifer
CS Well #1	BVHU-0038	Simsboro
CS Well #2	BVHU-0039	Simsboro
CS Well #3	BVHU-0040	Simsboro
CS Well #5	BVHU-0042	Simsboro
CS Well #6	BVHU-0043	Simsboro
CS Well #7	BVDO-0013	Simsboro
CS Well #8	BVDO-0053	Simsboro
CS Well #9	BVDO-0152	Simsboro
CS Well #10	BVDO-0359	Simsboro
CS Well #11	BVDO-0360	Simsboro
CS Well #12	BVDO-0361	Simsboro