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MARK WALKER
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August 8, 2024

Via email: aday@brazosvalleygcd.org

Mr. Alan M. Day, General Manager
Brazos Valley Groundwater Conservation District
112 West 3rd Street
Hearne, Texas. 77859

Re: Cities of Bryan and College Station's Comments on Proposed Amendments to
BVGCD Rules for the August 8, 2024, Hearing

Dear Mr. Day:

Please accept this letter as the comments of the Cities of Bryan and College Station (the "Cities") on the proposed amendments to BVGCD's rules to be considered at the August 8, 2024, public hearing.

Timing of Approval of Amendments

The Cities are concerned that the proposed amendments are being rushed towards approval. Given the number of permit applications and applicants affected by the proposed amendments, the Cities recommend that BVGCD use this time to see if an overall settlement can be worked out among the stakeholders that meets the needs of groundwater users both inside and outside of the district's boundaries. The Cities have identified a number of legal issues associated with the proposed approach to "ratify" the prior approvals that could lead to subsequent legal challenges. An overall settlement among the stakeholders could limit or avoid unnecessary conflict and costly litigation between the affected stakeholders and the district particularly if the settlement is made before the Board takes action on these amendments.

The Cities, therefore, request that the Board postpone approval of the rule amendments until October 1, 2024, at the earliest, and that the Board request that the affected stakeholders actively engage in good faith settlement negotiations. The Cities also ask that the Board enact a 90-day moratorium on the approval of permit applications under the rules adopted on September 10, 2020.

Suggested Revision to Proposed Language

If the Board decides to proceed with adoption of the proposed amendments, the Cities offer the following recommended revision to the proposed change to Rule 8.3(j):

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- (j) ~~Permit applications for groundwater production for 150 acre-feet per year or less may be granted by the District's General Manager if the application meets the requirements of the District's rules. These permits will have a one-year term. The General Manager may grant such administratively complete permit applications without notice, hearing, or further action by the Board; but shall provide a report of the granted permits to the Board.~~

Pursuant to Section 36.114(b) of the Texas Water Code, the District by rule shall determine whether a hearing on a permit or permit amendment application is required.

The General Manager is, therefore, authorized to grant and issue the following administratively complete permit applications and permit amendment applications without further notice, public hearing, nor action by the Board, ~~and the Board hereby ratifies the General Manager's prior issuance of:~~

- (1) permits for a term not exceeding one year for groundwater production for 150 acre-feet per year or less, if the application meets the requirements of the District's Rules; and
- (2) permits or permit amendments for which that:
 - (a) ~~the District~~ General Manager deemed that the permit or permit amendment application(s) were administratively complete under the District's Rules;
 - (b) the District provided notice(s) to the public of the permit or permit amendment application(s) under Rules 14.1 and 14.2 during the time period from January 1, 2021, to July 1, 2024; ~~AND~~
 - (c) the District did not receive any written notices of intent to contest the permit or permit amendment application(s) under rule 14.3.5(a); AND
 - (d) the permit or amendment application was considered, and unanimously approved by the Board, at a properly noticed meeting of the Board during the time period from January 1, 2021, to July 1, 2024.

The General Manager shall provide reports of the granted permits/permit amendments to the Board.

The Cities recommend the addition of "a term not exceeding one year" to maintain consistency with the language in both the rules approved on September 10, 2020, and on September 14, 2023, both of which limited the term of these permits to one-year term.

The Cities recommend the deletion of the "ratification" language because it creates ambiguity regarding what permit applications are covered by the rule. The applications affected

Mr. Alan Day, General Manager

August 7, 2024

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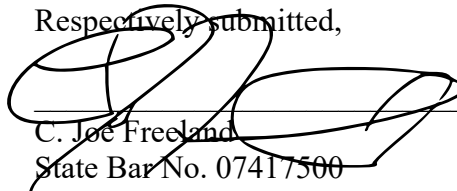
by the Board Member qualifications issue¹ were approved by the BVGCD Board, not by the General Manager. Because the General Manager did not approve the affected application and ratification of his actions will not fix the problem, this language creates unnecessary ambiguity. Therefore, to remove the ambiguity, the Cities recommend deleting the “ratification” language and allowing the General Manager to approve the affected applications.

The Cities recommend substituting the General Manager for the District with regard to the entity that “deemed” the applications administratively complete. Because this act was originally performed by the General Manager and not the Board, the language in the rules should accurately reflect the proper entity,

Finally, the Cities recommend adding a subsection that excludes from administrative approval, any permit or amendment application that was not unanimously approved by the Board Members who attended the prior Board meetings where the applications were considered. While the vast majority of applications considered by the Board have been approved unanimously, some applications drew opposition within the Board. Because the affected applications were considered at meetings where not all of the Board Members were present (otherwise there would have been a quorum), some Board Members were not able to vote on whether to issue a particular application. To provide all Board Members with the opportunity to weigh in on contentious applications that might not have had sufficient votes to pass if all Board Members were present, the Cities recommend adding the provision that would exclude from administrative approval, applications that did not unanimously approved at an affected meeting.

The Cities appreciate the opportunity to provide the BVGCD Board with the Cities’ comments on the proposed amendments to the BVGCD Rules. A representative of the Cities will be available at the public hearing on August 8, 2024, to answer any questions on these comments.

Respectfully submitted,



C. Joe Freeland

State Bar No. 07417500

**Attorneys for City of Bryan, and City of
College Station**

cc: Monique Norman, BVGCD Counsel

¹ Administrative approval of permits authorizing production of 150 acre-feet per year or less are not affected by the qualifications issue because the General Manager always had the authority to approve those applications.