

September 6, 2024

Paulina Williams
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paulina.williams@bakerbotts.comAlan Day
112 West 3rd Street
Hearne, Texas 77859Re: Contested Case Hearing Request for Proposed Drilling/Operating Permit
BVDO-0421 for The Texas A&M University System (“A&M”)

Dear Mr. Day:

UW Brazos Valley Farm (“UWBVF”) hereby contests A&M’s application for Drilling/Operating Permit BVDO-0421 (the “Application”). UWBVF holds certain groundwater rights in the Simsboro Aquifer, including Drilling/Operating Permit Nos. BVDO 00254–56, BVDO 0292–304, BVDO 0111, and certain historic use permits. UWBVF formally requests a contested case hearing on the Application because A&M’s proposed production will adversely affect UWBVF’s Simsboro groundwater interests and its legal rights, privileges, power, and economic interests in the issued operating permits, the issued UWBVF transport permit, and the pending transport permits that will become part of UWBVF’s regional water supply project (the “Project”).

Background

UWBVF owns roughly 9,000 acres of farmland in Robertson County, Texas. UWBVF produces groundwater from the Simsboro and Brazos Alluvium for agricultural operations on its farmland. UWBVF has further developed its property by obtaining from the Brazos Valley Groundwater Conservation District (“BVGCD” or the “District”) certain groundwater production permits (three production permits issued April 17, 2019, and 13 production permits issued October 20, 2022), as well as one transport permit (issued March 9, 2023), that authorize UWBVF to produce and transport up to 49,999 acre-feet per year of groundwater from the Simsboro for use in a four-county receiving area. Additionally, UWBVF has entered into option agreements with seven Robertson County landowners (the “Project Participants”) for the Simsboro groundwater from their respective properties. The Project Participants already hold District-issued operating permits to produce their groundwater. Once the Project Participants’ authorized production receives the corresponding transport authorizations, the Project Participants’ water, coupled with UWBVF’s existing authorized production and transport authorization, would allow up to 100,000 acre-feet of Simsboro groundwater per year to be used in the authorized receiving area. This water is designed to meet existing, known water shortages in the receiving areas.

Proposed Drilling/Operating Permit BVDO-0421 adversely affects UWBVF's groundwater interests and its legal rights, privileges, power, and economic interests related to the Project permits in a manner that is not common to the general public.

UWBVF holds personal justiciable interests in producing groundwater from the Simsboro Aquifer. This production is authorized by BVDO 00254–56, BVDO 0292–304, BVDO 0111, and its consolidated historic use permits for ongoing agricultural production. UWBVF's personal justiciable interests also include its contractual interests in the Project Participants' issued operating permits, and the interest UWBVF holds as co-applicant to the pending transport permits. A&M's Application proposes new production from the Simsboro, which will cause further drawdown of the Simsboro, thereby affecting UWBVF's rights in Simsboro groundwater.

Granting A&M's Application for new production will cause the groundwater levels at UWBVF and the Project Participants' wells to decline at a greater rate than would occur absent the grant of the Application. This Application also requires more robust evaluation relative to the BVGCD's articulated positions on the Desired Future Conditions.¹ A&M's Application affects UWBVF's legal rights, privileges, power, and economic interests.

Further, granting A&M's Application would adversely affect UWBVF's legal rights, privileges, power, and economic interests in the Project permits, and, in particular, the right to receive "fair, impartial, and nondiscriminatory" treatment by the District.² UWBVF and the Project Participants have the legal right to "rules that are fair and impartial."³ This right would be affected by the District's granting of A&M's Application before the District has resolved its governance concerns for prior permitting actions regarding numerous landowners, including UWBVF and Project Participants.

Conclusion

UWBVF has timely filed this contested case hearing request on A&M's Application. This application prejudices UWBVF's personal justiciable interests related to its legal rights, privileges, power, and economic interests that are within the District's regulatory authority.⁴ UWBVF therefore requests that the District conduct a contested case hearing on A&M's Application and that UWBVF be named a protesting party.⁵

Sincerely,



Paulina Williams
Counsel on behalf of
UW Brazos Valley Farm LLC

¹ UWBVF reserves its rights to dispute BVGCD's legal positions and policies.

² See Tex. Water Code § 36.122(q).

³ See Tex. Water Code § 36.101(2).

⁴ See BVGCD Rule 14.3.5.

⁵ BVGCD Rule 14.4(c-1)(2).

cc: David Lynch and Geoff Adamson, UWBF
Monique Norman, BVGCD Counsel