

LAW OFFICES OF  
**McCARTHY & McCARTHY, L.L.P.**

1122 COLORADO STREET, SUITE 2399  
AUSTIN, TEXAS 78701  
(512) 904-2310  
(512) 692-2826 (FAX)

September 6, 2024

Brazos Valley Groundwater Conservation District  
Attn: Alan Day, General Manager  
112 West 3rd Street  
Hearne, Texas 77859

*Via E-mail*

Re: Proposed Drilling/Operating Permit BVDO-0421 for The Texas A&M University System (A&M) – Contested Case Hearing Request

Dear Mr. Day:

On behalf of Ely Family Partnership, L.P. (the “Ely Family”), I am formally requesting the District conduct a contested case hearing on the Application for Drilling/Operating Permit BVDO-0421 filed by Texas A&M University (the “Application”). The Ely Family is an “affected party” with a “justiciable interest” in the outcome of the requested hearing as these terms are used and defined in Chapter 36, Texas Water Code.<sup>1</sup> The Application is scheduled to be heard by the District Board on September 12, 2024, so this request filed more than five (5) calendar days prior to the hearing is timely.<sup>2</sup>

The Ely Family applied for and was granted operating permits for eight wells authorized to produce 13,873 acre-feet of groundwater per annum from the Simsboro Aquifer. The wells are distributed over approximately 1,873 acres of land in Robertson County in which the Ely Family owns or controls the groundwater rights, including the rights in the Simsboro Aquifer. The Ely Family’s BVGCD Permits are designated as Permit Nos. BVDO 0377 through 0384, by the District. These Permits authorize the production of the permitted groundwater from the Simsboro Aquifer for all beneficial purposes authorized under Texas law and the Rules of the District. The Simsboro Aquifer is the same Aquifer that Texas A&M proposes to drill its new well and produce its requested 1900(+) acre-feet per annum.

On behalf of the Ely Family, I formally request a contested case hearing on the Application because A&M’s proposed well for new production from the Simsboro Aquifer affects the Ely

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<sup>1</sup> See Tex. Water Code § 36.415(b)(2); BVGCD Rule 14.3.5(b); see generally *City of Waco v. Tex. Comm’n on Environmental Quality*, 346 S.W.3d 781, 802 (Tex. App. – Austin 2011) *rev’d on other grounds*, 413 S.W.3d 409 (Tex. 2013).

<sup>2</sup> BVGCD Rule 14.3.5(a).

Family's constitutionally protected groundwater interests in, and the ability to use and enjoy the Ely Family's private property. The Application affects the Ely Family's legal rights, privileges, power, and economic interests in the operating permits obtained from the Brazos Valley Groundwater Conservation District ("District"), as well as the Ely Family's pending application for transport permit BVTP-007.

Through the Permits issued to the Ely Family, and the Ely Family's state-recognized right to develop groundwater from the Ely Family's private property, the Ely Family holds a personal justiciable interest in producing groundwater from the Simsboro. The Application, if granted, would affect these property interests and the legal rights appurtenant thereto by causing further drawdown of the Simsboro. A&M's new production will cause the groundwater levels at the Ely Family's wells to decline at a greater rate than would occur absent the grant of the Application. Additionally, a more thorough assessment of the Application is needed relative to the District's positions on Desired Future Conditions.

Further, granting A&M's Application would adversely affect the Ely Family's legal rights, privileges, power, and economic interests in the Ely Family's permits, and, in particular, the right to receive "fair, impartial, and nondiscriminatory" treatment by the District.<sup>3</sup> I also have the legal right to "rules that are fair and impartial."<sup>4</sup> 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 the Ely Family.

In sum, the Application affects and prejudices the Ely Family's personal justiciable interests in the groundwater it has been permitted to produce, thereby affecting their legal rights, privileges, power, and economic interests in both the groundwater and the permits granted to develop and beneficially use that groundwater by the District. These rights and interests which will be injured by the granting of Texas A&M's Application are within the District's regulatory authority. They are not rights and legal interests of either concern to, or injuries common to, the members of the public. They are particularized to the Ely Family. Accordingly, on behalf of the Ely Family I request that the District conduct a contested case hearing on A&M's Application and that the Ely Family Partnership, L.P., be granted party status in the contested case hearing.

Contact information for the Ely Family and myself is as follows:

Ely Family Partnership, L.P.  
Attn: Brad Ely  
P.O. Box 868  
Hearne, Texas 77859 (979)  
219-2919  
[bradley.ely.be@gmail.com](mailto:bradley.ely.be@gmail.com)

Edmond R. McCarthy, Jr.  
McCarthy & McCarthy, LLP  
1122 Colorado St., Suite 2399  
Austin, Texas 78701  
(512) 904-2313 (office)  
(512) 426-7138 (cell)  
[ed@ermlawfirm.com](mailto:ed@ermlawfirm.com)

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<sup>3</sup> See Tex. Water Code § 36.122(q).

<sup>4</sup> See Tex. Water Code § 36.101(2).

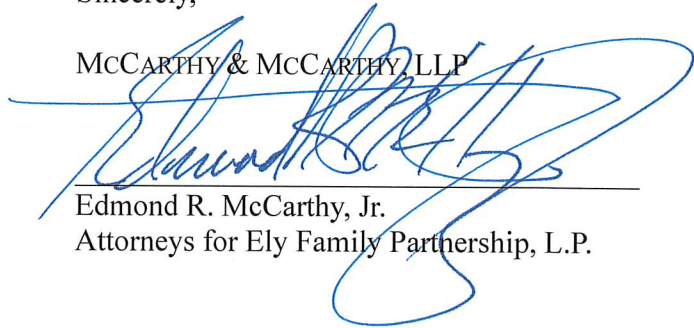
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By copy of this letter, I am providing notice to both Counsel for Texas A&M (Mr. Lynn Sherman) and to the District's Counsel, Ms. Monique Norman. Please feel free to call me with any questions.

Best wishes.

Sincerely,

MCCARTHY & MCCARTHY, LLP



Edmond R. McCarthy, Jr.  
Attorneys for Ely Family Partnership, L.P.

ERM/tn

cc (via e-mail):

Texas A&M University  
Attn: Lynn Sherman, Attorney

Monique Norman, BVGCD Counsel

Ely Family Partnership, L.P.  
Attn: Brad Ely, President