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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 Fazzino Investments L.P. (the “Fazzino Investments”), 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 Fazzino Investments 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.¹ 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.²

The Fazzino Investments applied for and was granted operating permits for six wells authorized to produce 10,348 acre-feet of groundwater per annum from the Simsboro Aquifer. The wells are distributed over approximately 1,319 acres of land in Robertson County in which the Fazzino Investments owns or controls the groundwater rights, including the rights in the Simsboro Aquifer. The Fazzino Investments’ BVGCD Permits are designated as Permit Nos. BVDO 0394 through 0399, 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 Fazzino Investments, I formally request a contested case hearing on the Application because A&M’s proposed well for new production from the Simsboro Aquifer affects

¹ 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).

² BVGCD Rule 14.3.5(a).

the Fazzino Investments' constitutionally protected groundwater interests in, and the ability to use and enjoy the Fazzino Investments' private property. The Application affects the Fazzino Investments' legal rights, privileges, power, and economic interests in the operating permits obtained from the Brazos Valley Groundwater Conservation District ("District"), as well as the Fazzino Investments' pending application for Transport Permit BVTP-006.

Through the Permits issued to the Fazzino Investments, and the Fazzino Investments' state-recognized right to develop groundwater from the Fazzino Investments' private property, the Fazzino Investments 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 Fazzino Investments' 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 Fazzino Investments' legal rights, privileges, power, and economic interests in the Fazzino Investments' permits, and, in particular, the right to receive "fair, impartial, and nondiscriminatory" treatment by the District.³ I also have the legal right to "rules that are fair and impartial."⁴ 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 Fazzino Investments.

In sum, the Application affects and prejudices the Fazzino Investments' 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 Fazzino Investments. Accordingly, on behalf of the Fazzino Investments I request that the District conduct a contested case hearing on A&M's Application and that the Fazzino Investments L.P., be granted party status in the contested case hearing.

Contact information for the Fazzino Investments and myself is as follows:

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³ See Tex. Water Code § 36.122(q).

⁴ See Tex. Water Code § 36.101(2).

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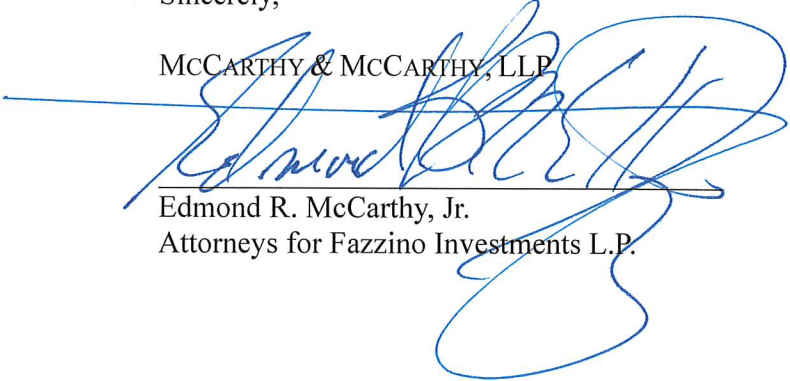
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By copy of this letter, I am providing notice to both Counsel for Texas A&M (Mr. Lynn Sherman) and to the District's Counsel, Ms. Monique Norman. Please feel free to call me with any questions.

Best wishes.

Sincerely,

MCCARTHY & MCCARTHY, LLP



Edmond R. McCarthy, Jr.
Attorneys for Fazzino Investments L.P.

ERM/tn

cc (via e-mail):

Texas A&M University
Attn: Lynn Sherman, Attorney

Monique Norman, BVGCD Counsel

Fazzino Investments L.P.
Attn: Charles Fazzino, President