

TEXAS A&M UNIVERSITY SYSTEM,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	
	§	
BRAZOS VALLEY GROUNDWATER	§	BRAZOS COUNTY, TEXAS
CONSERVATION DISTRICT AND ALAN	§	
DAY, GENERAL MANAGER OF BRAZOS	§	
VALLEY GROUNDWATER	§	
CONSERVATION DISTRICT,	§	
Defendants.	§	472 <sup>nd</sup> JUDICIAL DISTRICT

**PLAINTIFF’S FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Texas A&M University System files this verified First Amended Petition for Writ of Mandamus and Application for Temporary and Permanent Injunctive Relief against Defendants Brazos Valley Groundwater Conservation District and Alan Day, in his capacity as General Manager of the Brazos Valley Groundwater Conservation District, and in support thereof would respectfully show the Court as follows.

**I. Discovery Control Plan and Claim for Relief**

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3
2. The relief sought in this case is within the jurisdictional limits of the Court. Plaintiff seeks only non-monetary relief at this time. Tex. R. Civ. P. 47(c)(5).

**II. Parties and Service**

3. Plaintiff Texas A&M University System (“Plaintiff” or “TAMUS”) is a system of higher education and a state agency created by the Texas State Legislature, and maintains its principal place of business in College Station, Texas.

4. Defendant Brazos Valley Groundwater Conservation District (the “District”) is a conservation and reclamation district created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59 of the Texas Constitution and Chapter 8835 of the Special District Local Laws Code. The District may be served with process by serving its Board President, Jayson Barfknecht, or General Manager, Alan Day, at 112 West 3rd Street, Hearne, Texas 77859, or wherever they may be found.

5. Defendant Alan Day, General Manager of the District and a resident of Brazos County, may be served with process at 112 West 3rd Street, Hearne, Texas 77859, or wherever he may be found.

### **III. Jurisdiction and Venue**

6. The Court has subject matter jurisdiction over this proceeding against a political subdivision of the State and its officials. *See* Tex. Gov’t Code § 24.011.

7. As authorized by Section 36.251(c) of the Water Code, proper venue for TAMUS’s claims exists in Brazos County because it is a county in which the District, or part of it, is located. Venue is also proper in Brazos County under Sections 15.002(a)(1) and (2) of the Civil Practice and Remedies Code because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in Brazos County, and at least one of the defendants resides in Brazos County. The Texas A&M University campus and TAMUS’s RELLIS campus are both completely located in Brazos County, and the harm that they would suffer if the requested relief is not granted would arise in Brazos County. Further, the Legislature has indicated a preference that venue for suits involving TAMUS lies in Brazos County. *See* Tex. Educ. Code § 85.18.

#### IV. Background

8. Created pursuant to authority granted in the Texas Constitution, the District has been entrusted by the State and the public with the conservation of the State's water resources that are located in Robertson and Brazos Counties. The District's activities are particularly significant because they impact the water resources available to serve TAMUS and its flagship institution, Texas A&M University, the nation's largest university, the State's only land-, sea-, and air-grant institution, and a hub for cutting-edge research.

9. Preservation of the water resources within the District's boundaries are of paramount concern. In order for a well to be drilled and operated within the District, or water transported outside of the District, a permit must be issued by the District granting such authority to the applicant. Tex. Water Code §§ 36.113, 115, and 122. The District may, to protect existing uses, impose conditions on permits, and such conditions may be more restrictive in new permits. Tex. Water Code § 36.113. Further, "[i]n order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste," by rule the District may regulate the production of groundwater by wells and the spacing of wells. Tex. Water Code § 36.116; *see also* District Rules 8.3 and 8.7.

10. When reviewing an application for a permit to transport water outside of the District, the District is to consider the effect that transport will have on aquifer conditions and on existing permit holders and other groundwater users in the District, and the District may limit a transport permit accordingly. Tex. Water Code § 36.122; *see also* District Rules 10.3 and 10.4. These rules, as well as others, recognize that any production of groundwater in the District will inevitably affect the groundwater in the District, both now and in the future, and that the District

must consider these effects before allowing anyone to produce and transport the groundwater in the District.

11. The Water Code and Rules adopted by the District also provide that a party that would be affected by a permit, that is, one with a justiciable interest related to a permit application, is afforded the right to request and participate in a contested case on the permit application to ensure that their interests are duly considered by the District's board of directors. Tex. Water Code §§ 36.4051–418; District Rules 14.2, 14.3, 14.3.5, 14.4, and 14.5.

12. The District's board is comprised of eight directors who are responsible for the management of the District's affairs. Tex. Special Dist. Loc. Laws Code § 8835.051. Four directors are appointed by the Robertson County Commissioners Court, and each is expressly appointed to represent a particular interest or to meet a particular qualification (for example, "one must represent municipal interests in [Robertson County]" and "one must be a director or employee of a rural water supply corporation in [Robertson County]"). Tex. Special Dist. Loc. Laws Code § 8835.052. Two directors are appointed by the Brazos County Commissioners Court. *Id.* ("[O]ne must be a bona fide agricultural producer who derives a substantial portion of the producer's income from agriculture in the county;" and the other "one must be a director or employee of a rural water supply corporation in the county." *Id.*). The other two directors are appointed by the Cities of Bryan and College Station, with one representing each city and both approved by the Brazos County Commissioners Court. *Id.* This structure is intended to ensure that a wide swath of local interests are effectively represented in the District and weigh in on the District's considerations and decisions.

13. Under the District’s enabling legislation, a majority vote of a quorum of the board is required for board action. Tex. Special Dist. Loc. Laws Code § 8835.055. A tie vote fails. *Id.* A quorum is met when a majority of the board’s members are present for the board’s meeting. Tex. Water Code § 36.053.

14. As directed by the Water Code, hearings and preliminary hearings on permit and permit amendment applications are to be conducted by a quorum of the board or, if appropriate, an appointed hearing examiner or the State Office of Administrative Hearings (“SOAH”). Tex. Water Code §§ 36.4051–.406. District Rules likewise provide that if the board is to conduct a hearing on a permit or permit amendment application or a preliminary hearing on such applications, it must be conducted by a quorum of the board. District Rules 14.3 and 14.4. And, the Water Code and District Rules provide that “[i]f requested by. . . [a] party to a contested case, a district shall contract with [SOAH] to conduct the hearing.” Tex. Water Code § 36.416(b); District Rule 14.4.

15. Additionally, the Water Code and District Rule 2.3 require the board’s meetings to be conducted in accordance with the Open Meetings Act, which defines “meeting” as a deliberation among a quorum of the board or a gathering that is conducted by the board, at which a quorum is present. Tex. Water Code § 36.064; Tex. Gov’t Code § 551.001. The Open Meetings Act defines “deliberation” as a verbal or written exchange among a quorum of the board concerning an issue within the board’s jurisdiction. *Id.* The Open Meetings Act requires every regular, special, or called board meeting to be open. Tex. Gov’t Code § 551.002. These rules effectively seek to ensure that a consensus of the local community—with all its various interests—consider and act on applications that are brought before the District. The only time that the board may delegate to the District’s General Manger the authority to act on a permit application is in the

limited circumstance where the permit application does not require a hearing, as identified under Section 36.114(a) of the Water Code, and the board has by rule delegated that authority to the General Manager. Tex. Water Code § 36.114(c).

16. This past summer, and prior to August 5, 2024, it was determined by the District that “several board meetings had been held and business conducted without quorum present. This was due to eligibility of board members serving at the time.”<sup>1</sup> Currently, the entire period of the board members’ ineligibility is not definitively known to TAMUS. While the District has expressly acknowledged that the lack of a quorum extends to at least nine board meetings dating back to February 9, 2023, it may affect board meetings dating back to January 1, 2021.<sup>2</sup>

17. The business conducted at these meetings includes permit hearings and rulemaking, and the District has acknowledged that the lack of a quorum has invalidated action previously taken by the board.<sup>3</sup>

18. During this period affected by the lack of a quorum, the board purportedly held permit application hearings for numerous permits that make up what is referred to as the Upwell project (aka Goodland Farm project). In total, the Upwell project includes forty-eight production permit applications and eight transportation permit applications that seek to produce and transport over 100,000 acre-feet of groundwater per year out of the District.<sup>4</sup>

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1 Agenda Item 5 in BVGCD’s Notice of a Regular Board Meeting on August 8, 2024, and information regarding Agenda Item 5, attached hereto as Attachment 1.

2 *Id.* See also Draft Rules for Public Hearing on 8-8-24 at Rule 8.3(j) (proposing a rule amendment that would authorize the general manager to act on permit and permit amendment applications that, among other things, were noticed “during the time period from January 1, 2021, to July 1, 2024. . . .”), attached hereto as Attachment 2.

3 Agenda Item 10 in BVGCD’s Notice of a Regular Board Meeting on September 12, 2024, and information regarding Agenda Item 10, attached hereto as Attachment 3.

4 A production permit authorizes the production of a certain quantity of groundwater at a specified rate, and a transport permit authorizes the transport of produced water outside of the District.

19. UW Brazos Valley Farm LLC (“Upwell”), a foreign entity that owns land in the District, has itself applied for sixteen production permits<sup>5</sup> and one transport permit—for the transfer of up to 49,999 acre-feet of water per year out of the District.<sup>6</sup> Upwell has also entered into agreements with seven local landowners, who in the aggregate have applied for thirty-two production permits<sup>7</sup> and seven transport permits—for an aggregated transfer of up to 57,718 acre-feet of water per year out of the District.<sup>8</sup> Upwell is a co-applicant to each of the landowners’ transport permits. The combined amount of all eight transfer permits would exceed 107,000 acre-feet of water per year, and the size and scope of the Upwell project alone has necessitated the need for the District to expand its own offices: “Due to the ever-increasing workload experienced by the District related to impending water production from the Goodland Farm Project (Upwell Water), there is a real need for the District to explore expanding office space to accommodate increased staffing and storage needs. . . It is the recommendation by the Building Committee and General Manager to purchase. . . property. . . as an addition to the existing District facility.”<sup>9</sup>

20. Pursuant to the Water Code and District Rules, TAMUS has the right to request contested case hearings on the permit applications pertaining to the Upwell project. District Rules provide that “[a]ny person who intends to protest a permit application and request a contested case

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5 Upwell production permits, which are: BVDO-0254; BVDO-0255; BVDO-0256; BVDO-0292; BVDO-0293; BVDO-0294; BVDO-0295; BVDO-0296; BVDO-0297; BVDO-0298; BVDO-0299; BVDO-0300; BVDO-0301; BVDO-0302; BVDO-0303; and BVDO-0304.

6 Upwell transport permit: BVTP-001.

7 Landowner/Upwell production permits, which are: BVDO-0108; BVDO-0315; BVDO-0316; BVDO-0317; BVDO-0377; BVDO-0378; BVDO-0379; BVDO-0380; BVDO-0381; BVDO-0382; BVDO-0383; BVDO-0384; BVDO-0385; BVDO-0386; BVDO-0387; BVDO-0388; BVDO-0389; BVDO-0394; BVDO-0395; BVDO-0396; BVDO-0397; BVDO-0398; BVDO-0399; BVDO-0401; BVDO-0402; BVDO-0408; BVDO-0409; BVDO-0410; BVDO-0411; BVDO-0412; BVDO-0413; and BVDO-0414.

8 Landowner/Upwell transport permits, which are: BVTP-002; BVTP-003; BVTP-004; BVTP-005; BVTP-006; BVTP-007; and BVTP-008.

9 Agenda Item 1 in in BVGCD’s Notice of a Special Board Meeting on June 3, 2024, and information regarding Agenda Item 1, attached hereto as Attachment 4.

hearing must provide written notice of the request to the District office at least five (5) calendar days prior to the date of the hearing.” District Rule 14.3.5. Following receipt of such request, Section 36.4051 of the Water Code mandates that “[t]he board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with rules adopted [by the district].” The hearing shall be conducted by: (1) a quorum of the board; (2) an individual to whom the board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or (3) the State Office of Administrative Hearings. *Id.* Section 36.416 of the Water Code further provides “[i]f requested by the applicant or other party to a contested case, a district *shall* contract with the State Office of Administrative Hearings to conduct the hearing” (emphasis added).

21. TAMUS timely filed requests for contested case hearings on the permit applications pertaining to the Upwell project. On September 5, 2024, TAMUS submitted a written request for contested case hearings to be conducted by SOAH on the Upwell transport permit, the Upwell production permits, and the Landowner/Upwell production permits.<sup>10</sup> Because the board has yet to consider the applications on the Upwell transport permit, the Upwell production permits, and the Landowner/Upwell production permits at a duly noticed meeting attended by a quorum of the board, there have been no permit or board hearings on these permit applications. As a result, TAMUS’s written request for contested case hearings is timely because it has been submitted to the District at least five days prior to the date of a hearing on the applications. District Rule 14.3.5.

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<sup>10</sup> On June 14, 2024, TAMUS submitted a written request for contested case hearings to be conducted by SOAH on the Landowner/Upwell transport permits that were identified in the District’s agenda for a Public Permit Hearing to be held on June 18, 2024. At the board meeting conducted on September 12, 2024, the District confirmed that it had contracted with SOAH to conduct a contested case hearing on the Landowner/Upwell transport permits.



22. However, the District has failed or refused to act on TAMUS's requests. It has not contracted with SOAH to conduct the contested case hearings sought by TAMUS, as it is obligated to do pursuant to Section 36.4051(b) and (c) and Section 36.416(b) of the Water Code. The District has not provided a reason for its lack of action on TAMUS's requests, nor has the District indicated that it will do so.

23. The District did, however, post notice of a regularly scheduled board meeting to be held on September 12, 2024 for the purpose of, among other things, potentially taking action on permit applications for the Upwell project and on newly proposed amendments to the District Rules that would delegate authority to the District's General Manager to "grant and issue" permits, including permits relating to the Upwell project. By letter dated September 11, 2024, TAMUS demanded that the District immediately implement TAMUS's pending requests for contested case hearings on the Upwell project permits prior to any action by the board or the General Manager on those permit applications.

24. At its scheduled meeting conducted on September 12, the Board approved the proposed amendments to the District Rules. Further, the District's General Manager, when queried by the board, acknowledged that the District had received timely requests for contested case hearings on the permit applications pertaining to the Upwell project, without specificity. Despite that acknowledgement, however, neither the District nor the General Manager has confirmed or otherwise indicated that TAMUS's requests will be implemented by contracting with SOAH for preliminary hearing and further contested case proceedings.

## V. Writ of Mandamus

25. The Water Code makes clear that following receipt of a written request for contested case hearing, the District “*shall schedule*” a preliminary hearing and, if requested, the District “shall contract with [SOAH]” to conduct the preliminary hearing and further proceedings on the contested permit application. Tex. Water Code §§ 36.4051, 36.416. The statutes impose a clear duty on the District to implement TAMUS’s requests, and provide no room for the exercise of discretion. *See Phillips v. McNeill*, 635 S.W.3d 620 (Tex. 2021) (mandamus issued directing state agency to implement request for administrative hearing before SOAH); *Hawkins v. Cmty. Health Choice*, 127 S.W.3d 322 (Tex. App.—Austin 2004, no pet.) (affirming trial court’s issuance of writ of mandamus directing state entity to refer dispute to SOAH where statute provided that the entity “shall refer the claim” to SOAH following receipt of a contested case hearing request).

26. This Court has jurisdiction to issue a writ of mandamus to compel the District to perform its statutorily prescribed duties. *Phillips*, 635 S.W.3d at 628; *see also Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991) (requiring mayor to hold election on question of abolishing city’s corporate existence); *Bichsel v. Carver*, 321 S.W.2d 284, 285 (Tex. 1959) (proceeding brought to direct chief of police to reinstate member of police force). Section 24.011 of the Government Code expressly vests a district court with the authority to conduct a mandamus proceeding against a public official. Tex. Gov’t Code § 24.011 (“A judge of the district court may, either in term time or vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs necessary to the enforcement of the court’s jurisdiction.”).

27. A writ of mandamus is properly issued under Texas law to compel a public official to perform a ministerial act. *Phillips*, 635 S.W.3d at 628. An act is ministerial when the duty to be performed by the official is set forth with sufficient certainty that nothing is left to the exercise of

discretion. *Id.* Stated differently, while the district court's jurisdiction is not used to substitute its discretion for that of a public official, the performance of a clear duty that is ministerial should be mandated by the district court. *Harris County v. Walsweer*, 930 S.W.2d 659, 668 (Tex. App.—Houston [1st Dist.] 1996, writ denied).

28. Conversely, an act is not ministerial if it involves the exercise of discretion or judgment in determining whether the duty exists. *State Bar of Tex. v. Heard*, 603 S.W.2d 829, 832 (Tex. 1980). A writ of mandamus will not issue to compel a public official to perform an act which purely involves the exercise of discretion or judgment. *Anderson*, 806 S.W.2d at 793. However, this rule is not without exception—a writ of mandamus may issue in a proper case to correct a clear abuse of discretion by a public official. *Anderson*, 806 S.W.2d at 793. In addition, if a public official refuses, after proper request, to take any action in a matter involving the exercise of discretion, the refusal itself may constitute an abuse of discretion justifying the issuance of mandamus to compel the official to exercise his or her discretion. *See Mauzy v. Legislative Redistricting Bd.*, 471 S.W.2d 570, 575 (Tex. 1971) (mandamus issued ordering Legislative Redistricting Board to fulfill its duty to apportion legislative districts).

29. In this instance, the District's obligation to refer the permit and permit amendment applications to SOAH for contested case hearings is a clear, non-discretionary duty that the District cannot disregard. The statutory language makes clear that the District shall implement contested case hearing requests by contracting with SOAH to conduct the contemplated preliminary hearing and further proceedings. Despite multiple written requests, however, the District has failed or refused to implement TAMUS's pending hearing requests. Accordingly, TAMUS is entitled to a writ of mandamus compelling the District to refer the permit and permit amendment applications for the Upwell project to SOAH for preliminary hearing and further contested case proceedings.

## **VI. Application for Temporary and Permanent Injunctive Relief**

30. TAMUS re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully stated herein.

31. TAMUS further alleges that it is essential to preserve the status quo: if the District and the General Manager were to act under newly amended District Rule 8.3(j) to issue permits on the applications for the Upwell production permits, Upwell transport permit, and Landowner/Upwell production permits, then TAMUS would lose the opportunity—which it has a right to under Texas law and District Rules—to assert its rights and interests in contested case hearings conducted with SOAH on the permits, and the District would not consider—as it must—the effect that the production and transport of over 100,000 acre-feet per year of water out of the District would have on TAMUS and others in the District. The recent passage of the rule amendment poses an immediate threat that TAMUS will suffer irreparable harm to its rights and interests, without adequate remedy at law, if denied the opportunity for contested case hearings as the production and transport of substantial quantities of water would irreversibly impact the aquifer that TAMUS and others in the District rely upon, and the health, safety and welfare of individuals and interests served by TAMUS.

32. Pursuant to Chapter 65 of the Civil Practice and Remedies Code, and based on the facts set forth in this petition, TAMUS applies for both temporary and permanent injunctive relief as follows:

- a. after notice and a hearing, a temporary injunction restraining the District and the General Manager from issuing permits on the applications for the Upwell production permits, Upwell transport permit, and Landowner/Upwell production permits, until such time as the court may

determine, through trial or dispositive motion, the issuance of a writ of mandamus applied for in this petition;

- b. after a full trial or hearing on a dispositive motion, a permanent injunction granting the same relief as requested in paragraph 32(a), above.

33. TAMUS will likely succeed on the merits of its claims after a full trial or hearing on dispositive motion(s). This Court has jurisdiction to issue a writ of mandamus to compel the District and its General Manager to perform statutorily prescribed duties. A writ of mandamus is properly issued under Texas law to compel a public official to perform a ministerial act. The obligation to refer the permit and permit amendment applications to SOAH for contested case hearings is a clear, non-discretionary duty that the District cannot disregard. TAMUS is thus entitled to both a writ of mandamus compelling the District to refer the permit and permit amendment applications for the Upwell project to SOAH for preliminary hearing and further contested case proceedings, and to relief enjoining the District or its General Manager from issuing the permits until such proceedings are concluded.

#### **VII. Conditions Precedent**

34. TAMUS pleads that all conditions precedent to recovery have been performed, have occurred, or have been excused/waived.

#### **VIII. Prayer**

WHEREFORE, Plaintiff Texas A&M University System respectfully prays that Defendants be cited to appear and, upon final hearing, that the Court issue a writ of mandamus directing the Brazos Valley Groundwater Conservation District and its General Manager to coordinate and contract with the State Office of Administrative Hearings to conduct the requested contested case proceedings on the permit and permit amendment applications associated with the Upwell project; that upon notice and a hearing, a temporary injunction be issued restraining the

District and the General Manager from issuing permits for the Upwell production permits, Upwell transport permit, and Landowner/Upwell production permits until such proceedings are concluded; that upon a full trial or hearing on a dispositive motion, a permanent injunction be issued restraining the District and General Manager from issuing permits for the Upwell production permits, Upwell transport permit, and Landowner/Upwell production permits until such proceedings are concluded; and such other and further relief, at law or in equity, to which Plaintiff may be shown to be justly entitled.

Respectfully submitted,

By: /s/ Breck Harrison

Lynn Sherman  
State Bar No. 18243630  
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*Attorneys for Plaintiff Texas A&M  
University System*

**VERIFICATION**

STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

My name is Kelly Templin, my date of birth is June 4, 1964, and my address is 1484 Avenue A, Bryan, 77807. I am the Executive Director of the Texas A&M University System's RELLIS Campus, and an authorized representative of the Texas A&M University System for purposes of this Verification.

I have read the foregoing Plaintiff's First Amended Petition for Writ of Mandamus and Application for Temporary and Permanent Injunctive Relief, and affirm that the factual statements contained therein are true and correct, based upon my personal knowledge, the records attached to the petition, and the records and information available to me through my duties with the Texas A&M University System.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Brazos County, State of Texas, on the 13<sup>th</sup> day of September, 2024.

  
\_\_\_\_\_  
Kelly Templin

# **ATTACHMENT 1**

*to Plaintiff's First Amended  
Petition for Writ of Mandamus  
and Application for Temporary  
and Permanent Injunctive  
Relief*





## Agenda

**BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT  
Regular Board Meeting  
District Office  
112 W. 3<sup>rd</sup> Street – Hearne, Texas  
Thursday, August 8, 2024 – 2:00 p.m.**

**Notice is given that the Board of Directors of the Brazos Valley Groundwater Conservation District will hold a Regular Board Meeting on Thursday, August 8, 2024 @ 2:00 p.m. in the District Office.**

Call meeting to order

Pledge of Allegiance

Declare quorum present

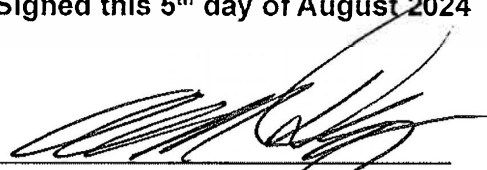
Public Comment

- a) Non-agenda items
- b) Agenda items

1. Discussion and possible action on the minutes of the July 11, 2024 Regular Board Meeting.
2. Financial Report – July 2024
3. Executive Session:
  - Texas Government Code 551.071 – To receive attorney-client privileged information regarding District rule amendments including, but not limited to, amendments to District Rules 2.2, 5.2(f) & (g), 6.1, 6.2, 7.1(c), 8.1, 8.3(h) & (j), 8.4, 8.5(b), 8.7, 8.8, 8.9, 9.1, 10.3, 10.4(d), 14.2, 14.3.5, 14.4, 14.6, and Section 16.
  - Texas Government Code 551.071 – To receive attorney-client privileged information regarding Board actions taken during the following regular Board meetings that were properly noticed under the District Rules, but were later determined to lack a quorum: February 9, 2023, March 9, 2023, June 8, 2023, August 10, 2023, September 14, 2023, October 12, 2023, November 16, 2023, May 16, 2024, and June 3, 2024.
  - Texas Government Code 551.071 – To receive attorney-client privileged information regarding pending transport permit applications for groundwater from the Simsboro Aquifer.
  - Texas Government Code 551.071 - To receive attorney-client privileged information regarding 2024 & 2025 export permit fee structure.
4. Discussion and possible action, following noticed Public Rules Hearing, on proposed District rule amendments including, but not limited to, amendments to District Rules 2.2, 5.2(f) & (g), 6.1, 6.2, 7.1(c), 8.1, 8.3(h) & (j), 8.4, 8.5(b), 8.7, 8.8, 8.9, 9.1, 10.3, 10.4(d), 14.2, 14.3.5, 14.4, 14.6, and Section 16.

5. Discussion and possible action on the ratification of Board actions taken during the following regular Board meetings that were properly noticed under the District Rules, but were later determined to lack a quorum: February 9, 2023, March 9, 2023, June 8, 2023, August 10, 2023, September 14, 2023, October 12, 2023, November 16, 2023, May 16, 2024, and June 3, 2024. The listed past agenda items to be voted on are attached to this notice.
6. Discussion and possible action on the following pending aggregated transport permit applications for groundwater from the Simsboro Aquifer: (BVTP-002) for RH2O LLC; (BVTP-003) for Clifford A. Skiles III; (BVTP-004) for James C. Brien; (BVTP-005) for L. Wiese Moore LLC; (BVTP-006) for Fazzino Investments LP; (BVTP-007) for Ely Family Partnership LP; and (BVTP-008) for Cula d'Brazos LLC, all of whom are co-applicants with UW Brazos Valley Farm LLC.
7. Discussion and possible action on matters involving GMA 12 including but not limited to submitting revised pumping files to GMA 12 for consideration during the fourth round of Desired Future Conditions planning and individual district financial responsibility regarding the Explanatory Report.
8. General Manager's Report
  - a) Drought Monitor Report
  - b) Wells permitted pursuant to District Rule 8.3(j)
  - c) Simsboro Mitigation Management Zone Update
  - d) GMA 12 DFC Update
  - e) District Business & Activities
  - f) Management Plan Update
9. Discussion and possible future agenda items.
10. Adjourn

Signed this 5<sup>th</sup> day of August 2024

  
Alan M. Day, General Manager

The Board of Directors may meet in closed session, pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071-551.076, to:

- (1) consult with attorney ;
- (2) deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (3) deliberate a negotiated contract for a prospective gift or donation to the District if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (4) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a Board member or District employee;
- (5) to receive information from employees or question employees, but not deliberate public business or agency policy that affects public business; and
- (6) to deliberate the deployment or specific occasions for implementation of security personnel or devices.

The Board may also meet in open session on these matters as required by the Texas Open Meetings Act, Texas Government Code § 551.102.

**\*\* Agenda Items may be taken out of order at the discretion of the Board Chairman**

**Thursday, February 9, 2023 – 2:00 p.m.**

1. Discussion and possible action on minutes of the January 12, 2023 Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of January 2023. **The motion passed.**
3. Discussion and possible action related to signatories on Certificates of Deposit purchased for the District by the District Investment Officer at Prosperity Bank, SouthStar Bank, and Truist Bank. **The motion passed.**
4. Discussion and possible action on recommendations by the Budget/Finance Committee relating to revisions to the District Bylaws addressing protocol for obtaining quotes for work to be performed for the District and purchasing. **The motion passed.**
5. Presentation, discussion, and possible action of the 2022 District Annual Report. **The motion passed.**
6. Discussion and possible action on the purchase of continuous water level monitoring devices and related equipment from the District Well Assistance Fund. **The motion passed.**

**Thursday, March 9, 2023 at 2:00 p.m.**

1. Discussion and possible action on minutes of the March 9, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of March 2023. **The motion passed.**
3. Discussion and possible action on a recommendation by the Education/Conservation Committee related to presentation of a District Groundwater Conservationist of the Year Award. **The motion passed.**
4. Discussion and possible action on approving an addendum to the 2023 District Operating Budget detailing vendors and expenditures by budget line item. **The motion passed.**
5. Discussion and possible action on revisions to the water level measurement protocol when using an electric line or steel tape. **The motion passed.**

**Thursday, June 8, 2023 at 2:00 p.m.**

1. Discussion and possible action on minutes of the May 11, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of May 2023. **The motion passed.**
- 3.
4. Discussion and possible action approving a study of groundwater/surface water interaction in the segment of the Brazos River bordering Robertson, Milam, Brazos, and Burleson counties. **The motion passed.**
5. Discussion and possible action to amend the 2023 District Operating Budget related to grant funding. **The motion passed.**
6. Discussion and possible action on draft proposed revision to the District Management Plan for submission to the Texas Water Development Board for preapproval and related to the five-year mandatory update of the Plan by November 30, 2023. **The motion passed.**
- 7.

**Thursday, August 10, at 2:00 p.m**

1. Discussion and possible action on minutes of the July 13, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of July 2023. **The motion passed.**
3. Discussion and possible action on an application by the City of Hearne to amend operating permits BVHU-0011, BVHU-0012, BVHU-0013, & BVHU-0014 increasing the rate of production from currently permitted amounts to actual production rates under District Rules 11.1(b) and 11.1(e). **The motion passed.**
- 4.
5. Discussion and possible action approving the creation of an Interlocal Agreement among GMA 12 members detailing the scope of work and financial responsibilities of each member. **The motion passed.**

**Thursday, September 14, at 2:00 p.m.**

1. Discussion and possible action on minutes of the August 10, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of August 2023. **The motion passed.**

3. Discussion and possible action on amending the 2023 District Operating Budget related to Engineering/Hydrogeological Services. **The motion passed.**

4. **Thursday, October 12, 2023 at 2:00 p.m**

1. Discussion and possible action on minutes of the September 14, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of September 2023. **The motion passed.**
3. Discussion and possible action on the Education/Conservation Committee recommendation to re-adopt the District Water Conservation Plan. **The motion passed.**
4. Discussion and possible action on the Education/Conservation Committee recommendation to re-adopt the District Drought Contingency Plan. **The motion passed.**
5. Discussion and possible action on the Personnel Committee recommendation for contracted services for FY2024. **The motion passed.**
6. Discussion and possible action on Resolution 10-12-23.6 relating to suggested revisions to the District Personnel Policy by the Personnel Committee. **The motion passed.**
- 7.
- 8.
- 9.
- 10.
11. Election of a new Secretary for the District Board of Directors. **The motion passed.**

**Thursday, November 16, 2023 at 2:00 p.m.**

1. Discussion and possible action on minutes of the October 12, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of October 2023. **The motion passed.**
3. Discussion and possible action on Resolution 11-16-23.3 to adopt the revised District Management Plan prepared for the Texas Water Development Board and required under Chapter 36 of the Texas Water Code. **The motion passed.**
4. Discussion and possible action on the adoption of the FY2024 District Operating Budget. **A motion was made by Jayson Barfknecht, second by Jeff Kennedy to approve the adoption of the FY2024 District Operating Budget as presented to the Board. The motion passed unanimously.**
5. Discussion and possible action on Resolution 11-16-23.5 setting the FY2024 water production and export fee schedule following a public hearing. **The motion passed.**
6. Discussion and possible action to adopt the state agency Prohibited Technologies Security Policy mandated by the passage of SB 1893 during the 88<sup>th</sup> Legislative Session. **The motion passed.**
- 7.

**Thursday, May 16, 2024 at 2:00 p.m.**

1. Discussion and possible action on the minutes of the April 11, 2024 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report – April 2024. **The motion passed.**
- 3.
4. Discussion and possible action on processing of pending transport permit applications for groundwater from the Simsboro Aquifer. **The motion passed.**
5. Discussion and possible action regarding the drilling of City of Calvert Well #7 (BVDO-0320) under the District's Water Well Assistance Agreement with Permittee UW Brazos Valley Farm, LLC. **The motion passed.**
- 6.

**Monday, June 3, 2024 at 10:00 a.m.**

1. Discussion and possible action on authorizing the purchase of the H&R Block building located at 118 W 3<sup>rd</sup> Street in Hearne, Texas **The motion passed.**

## **Item 5 – Ratification of Board Actions Due to Lack of Quorum**

Just recently District staff discovered that several board meetings had been held and business conducted without quorum present. This was due to eligibility of board members serving at the time. The time period and meetings affected by the lack of a quorum are:

- February 9, 2023
- March 9, 2023
- June 8, 2023
- August 10, 2023
- September 14, 2023
- October 12, 2023
- November 16, 2023
- May 16, 2024
- June 3, 2024

Attached are the minutes of the meetings listed above and the items within each of the agendas on which action was taken.

**It is the recommendation of the General Manager that board actions taken during the board meetings that were properly noticed under the District Rules but were later determined to lack a quorum which include February 9, 2023, March 9, 2023, June 8, 2023, August 10, 2023, September 14, 2023, October 12, 2023, November 16, 2023, May 16, 2024, and June 3, 2024 be ratified.**

**Thursday, February 9, 2023 – 2:00 p.m.**

1. Discussion and possible action on minutes of the January 12, 2023 Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of January 2023. **The motion passed.**
3. Discussion and possible action related to signatories on Certificates of Deposit purchased for the District by the District Investment Officer at Prosperity Bank, SouthStar Bank, and Truist Bank. **The motion passed.**
4. Discussion and possible action on recommendations by the Budget/Finance Committee relating to revisions to the District Bylaws addressing protocol for obtaining quotes for work to be performed for the District and purchasing. **The motion passed.**
5. Presentation, discussion, and possible action of the 2022 District Annual Report. **The motion passed.**
6. Discussion and possible action on the purchase of continuous water level monitoring devices and related equipment from the District Well Assistance Fund. **The motion passed.**

**Thursday, March 9, 2023 at 2:00 p.m.**

1. Discussion and possible action on minutes of the March 9, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of March 2023. **The motion passed.**
3. Discussion and possible action on a recommendation by the Education/Conservation Committee related to presentation of a District Groundwater Conservationist of the Year Award. **The motion passed.**
4. Discussion and possible action on approving an addendum to the 2023 District Operating Budget detailing vendors and expenditures by budget line item. **The motion passed.**
5. Discussion and possible action on revisions to the water level measurement protocol when using an electric line or steel tape. **The motion passed.**

**Thursday, June 8, 2023 at 2:00 p.m.**

1. Discussion and possible action on minutes of the May 11, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of May 2023. **The motion passed.**
- 3.
4. Discussion and possible action approving a study of groundwater/surface water interaction in the segment of the Brazos River bordering Robertson, Milam, Brazos, and Burleson counties. **The motion passed.**
5. Discussion and possible action to amend the 2023 District Operating Budget related to grant funding. **The motion passed.**
6. Discussion and possible action on draft proposed revision to the District Management Plan for submission to the Texas Water Development Board for preapproval and related to the five-year mandatory update of the Plan by November 30, 2023. **The motion passed.**
- 7.

**Thursday, August 10, at 2:00 p.m**

1. Discussion and possible action on minutes of the July 13, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of July 2023. **The motion passed.**
3. Discussion and possible action on an application by the City of Hearne to amend operating permits BVHU-0011, BVHU-0012, BVHU-0013, & BVHU-0014 increasing the rate of production from currently permitted amounts to actual production rates under District Rules 11.1(b) and 11.1(e). **The motion passed.**
- 4.
5. Discussion and possible action approving the creation of an Interlocal Agreement among GMA 12 members detailing the scope of work and financial responsibilities of each member. **The motion passed.**

**Thursday, September 14, at 2:00 p.m.**

1. Discussion and possible action on minutes of the August 10, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of August 2023. **The motion passed.**
3. Discussion and possible action on amending the 2023 District Operating Budget related to Engineering/Hydrogeological Services. **The motion passed.**
- 4.

**Thursday, October 12, 2023 at 2:00 p.m**

1. Discussion and possible action on minutes of the September 14, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of September 2023. **The motion passed.**
3. Discussion and possible action on the Education/Conservation Committee recommendation to re-adopt the District Water Conservation Plan. **The motion passed.**
4. Discussion and possible action on the Education/Conservation Committee recommendation to re-adopt the District Drought Contingency Plan. **The motion passed.**
5. Discussion and possible action on the Personnel Committee recommendation for contracted services for FY2024. **The motion passed.**
6. Discussion and possible action on Resolution 10-12-23.6 relating to suggested revisions to the District Personnel Policy by the Personnel Committee. **The motion passed.**
- 7.
- 8.
- 9.
- 10.
11. Election of a new Secretary for the District Board of Directors. **The motion passed.**

**Thursday, November 16, 2023 at 2:00 p.m.**

1. Discussion and possible action on minutes of the October 12, 2023 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report for the month of October 2023. **The motion passed.**
3. Discussion and possible action on Resolution 11-16-23.3 to adopt the revised District Management Plan prepared for the Texas Water Development Board and required under Chapter 36 of the Texas Water Code. **The motion passed.**
4. Discussion and possible action on the adoption of the FY2024 District Operating Budget. **A motion was made by Jayson Barfknecht, second by Jeff Kennedy to approve the adoption of the FY2024 District Operating Budget as presented to the Board. The motion passed unanimously.**
5. Discussion and possible action on Resolution 11-16-23.5 setting the FY2024 water production and export fee schedule following a public hearing. **The motion passed.**
6. Discussion and possible action to adopt the state agency Prohibited Technologies Security Policy mandated by the passage of SB 1893 during the 88<sup>th</sup> Legislative Session. **The motion passed.**
- 7.

**Thursday, May 16, 2024 at 2:00 p.m.**

1. Discussion and possible action on the minutes of the April 11, 2024 Permit Hearing & Regular Board Meeting. **The motion passed.**
2. Financial Report – April 2024. **The motion passed.**
- 3.
4. Discussion and possible action on processing of pending transport permit applications for groundwater from the Simsboro Aquifer. **The motion passed.**
5. Discussion and possible action regarding the drilling of City of Calvert Well #7 (BVDO-0320) under the District's Water Well Assistance Agreement with Permittee UW Brazos Valley Farm, LLC. **The motion passed.**
- 6.

**Monday, June 3, 2024 at 10:00 a.m.**

1. Discussion and possible action on authorizing the purchase of the H&R Block building located at 118 W 3<sup>rd</sup> Street in Hearne, Texas **The motion passed.**

# **ATTACHMENT 2**

*to Plaintiff's First Amended  
Petition for Writ of Mandamus  
and Application for Temporary  
and Permanent Injunctive  
Relief*



**RULES OF THE BRAZOS VALLEY  
GROUNDWATER CONSERVATION DISTRICT**

Notice of the Rules of the Brazos Valley Groundwater Conservation District was published on July 18, 2024, and last amended by Board action on August 8, 2024.

In accordance with Section 59 of Article XVI of the Texas Constitution and Act of May 26, 2001, 77<sup>th</sup> Leg., R.S., ch. 1307, 2001 Tex. Gen. Laws (HB 1784), and the non-conflicting provisions of Chapter 36, Texas Water Code the following Rules are hereby ratified and adopted as the Rules of this District by its Board. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended.

The Rules, regulations, and modes of procedure herein contained are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State and the Rules of this District. To the end that these objectives are attained, these Rules will be so construed.

These Rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case may these Rules be construed as a limitation or restriction upon the exercise of powers, duties, and jurisdiction conferred by law. These Rules will not limit or restrict the amount and accuracy of data or information that may be required for the proper administration of the law.

In adopting these rules, The District considered all groundwater uses and needs; developed rules that are fair and impartial; considered the groundwater ownership and rights described by Section 36.002; considered the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution; and considered the goals developed as part of the district's management plan under Section 36.1071; and developed rules that do not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

*Draft Rules for Public Hearing on 8-8-24*

volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.

- (2) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
- (A) the modeled available groundwater determined by the Texas Water Development Board;
  - (B) the Texas Water Development Board's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;
  - (C) the amount of groundwater authorized under permits previously issued by the district;
  - (D) a reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
  - (E) yearly precipitation and production patterns.
- (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 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 that:
  - (a) the District 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).

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

**RULE 8.4. APPLICATIONS**

- (a) Each original application for a certificate of registration, water well drilling permit, operating permit, transport permit, and permit renewal or amendment requires an application by the applicant. Applications for multiple wells may be combined if submitted by the same applicant. Each well on an application for multiple wells will be assigned an individual operating permit detailing production rate and total maximum annual production. Application forms will be provided by the District and furnished to the applicant by request. The District will hold hearing(s) on a permit application(s) in accordance with Section 14 of the District's rules.
- (b) An application shall be in writing and sworn and shall contain:
- (1) the name and mailing address of the applicant and the name and address of the owner of the land, if different from the applicant, on which the well is to be located;
  - (2) if the applicant is not the owner of the property, documentation establishing the applicable authority to construct and operate a well on the owner's property for the proposed use;
  - (3) the applicant must provide evidence that they have the legal authority to produce the groundwater associated with the land surface and the permit application, as required by Rule 7.1(c). The applicant must also provide any documents that transfers that right to own, control, or produce the groundwater rights to another person/entity that are associated with the land surface and the permit application, as required by Rule 7.1(c). A permit may be amended or revoked if the groundwater rights or right to produce, related to a permit under Rule 7.1(c), are legally transferred to another person/entity. The applicant shall attest to the information required in this rule by a District-provided affidavit form and submit the affidavit with the permit application. All legal document affecting the legal authority to produce groundwater on real property in Brazos and Robertson counties is required to be filed with the county deed records in full compliance with Chapter 12 of the Texas Property Code regarding the recording of instruments;
  - (4) for exempt wells, a statement regarding the basis for asserting that the well will be exempt under Rule 8.1;
  - (5) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose and any evidence supporting the authenticity of the intended beneficial use;
  - (6) except for exempt wells and operating permits for Existing wells based on

# **ATTACHMENT 3**

*to Plaintiff's First Amended  
Petition for Writ of Mandamus  
and Application for Temporary  
and Permanent Injunctive  
Relief*



## Agenda

**BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT  
Regular Board Meeting  
District Office**

**112 W. 3<sup>rd</sup> Street – Hearne, Texas  
Thursday, September 12, 2024 – 2:00 p.m.**

**Notice is given that the Board of Directors of the Brazos Valley Groundwater Conservation District will hold a Regular Board Meeting on Thursday, September 12, 2024 @ 2:00 p.m. in the District Office.**

Call meeting to order

Pledge of Allegiance

Declare quorum present

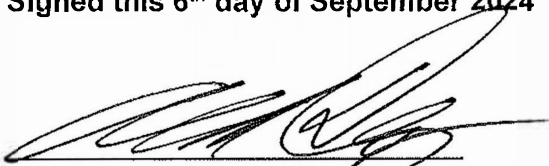
Public Comment

- a) Non-agenda items
- b) Agenda items

1. Discussion and possible action on the minutes of the August 8, 2024 Rules Hearing, Public Permit Hearing & Regular Board Meeting.
2. Financial Report – August 2024
3. Presentation of the 2023 District Financial Audit by Russell Armagost CPA from Milberger, Nesbitt, and Ask, LLP.
4. Discussion and possible action on the adoption of the FY2023 District Financial Audit.
5. Discussion & possible action to amend the 2024 District Operating Budget
6. Presentation by Mark Nickels updating the Board on progress related to the Brazos River Alluvium Aquifer groundwater/surface water interaction study sponsored by the Brazos Valley GCD and being conducted by Baylor University.
7. Discussion and possible action to ratify payment to Albo LLC for the contracted demolition of the building at 213 S. Magnolia Street, Hearne, Texas.
8. Discussion and possible action on the Personnel Committee recommendation for contracted services for FY2025.
9. Executive Session:
  - Texas Government Code 551.071 – To receive attorney-client privileged information regarding District rule amendments including, but not limited to, amendments to District Rules 2.2, 5.2(f) & (g), 6.1, 6.2, 7.1(c), 8.1, 8.3(h) & (j), 8.4, 8.5(b), 8.7, 8.8, 8.9, 9.1, 10.3, 10.4(d), 14.2, 14.3.5, 14.4, 14.6, and Section 16.

- Texas Government Code 551.071 – To receive attorney-client privileged information regarding pending transport permit applications for groundwater from the Simsboro Aquifer.
  - Texas Government Code 551.071 - To receive attorney-client privileged information regarding 2024 & 2025 export permit fee structure.
10. Discussion and possible action, following noticed Public Rules Hearing, on proposed District rule amendments including, but not limited to, amendments to District Rules 2.2, 5.2(f) & (g), 6.1, 6.2, 7.1(c), 8.1, 8.3(h) & (j), 8.4, 8.5(b), 8.7, 8.8, 8.9, 9.1, 10.3, 10.4(d), 14.2, 14.3.5, 14.4, 14.6, and Section 16.
  11. Discussion and possible action on the following pending aggregated transport permit applications for groundwater from the Simsboro Aquifer: (BVTP-002) for RH2O LLC; (BVTP-003) for Clifford A. Skiles III; (BVTP-004) for James C. Brien; (BVTP-005) for L. Wiese Moore LLC; (BVTP-006) for Fazzino Investments LP; (BVTP-007) for Ely Family Partnership LP; and (BVTP-008) for Cula d'Brazos LLC, all of whom are co-applicants with UW Brazos Valley Farm LLC.
  12. General Manager's Report
    - a) Drought Monitor Report
    - b) Wells permitted pursuant to District Rule 8.3(j)
    - c) Simsboro Mitigation Management Zone Update
    - d) GMA 12 DFC Update (GAM Run presentation for GMA 12)
    - e) District Business & Activities
    - f) Management Plan Update
  13. Discussion and possible future agenda items.
  14. Adjourn

Signed this 6<sup>th</sup> day of September 2024



**Alan M. Day, General Manager**

The Board of Directors may meet in closed session, pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071-551.076, to:

- (1) consult with attorney ;
- (2) deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (3) deliberate a negotiated contract for a prospective gift or donation to the District if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (4) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a Board member or District employee;
- (5) to receive information from employees or question employees, but not deliberate public business or agency policy that affects public business; and
- (6) to deliberate the deployment or specific occasions for implementation of security personnel or devices.

The Board may also meet in open session on these matters as required by the Texas Open Meetings Act, Texas Government Code § 551.102.

**\*\* Agenda items may be taken out of order at the discretion of the Board Chairman**

## **Item 10 – Consideration & Adoption of Proposed District Rule Revisions**

The current set of rules were properly noticed, public comment taken on each proposed revision, and adopted by the Board on September 14, 2023. It was later determined by District staff that three (3) of the current board members had either been ineligible for appointment to the board at the time of their appointment or had become ineligible since the original appointment date. This led to a lack of quorum during the September 14, 2023 board meeting invalidating the action taken by the Board related to the rules.

District staff reinitiated the process for rulemaking by properly posting notice on July 16, 2024 for a Public Rules Hearing on August 8, 2024. The proposed rule revisions have been distributed to the requested distribution list and placed on the District website for public review and comments.

This agenda item is posted as an action item for adoption of proposed rule revisions following the Public Rules Hearing held on August 8, 2024 prior to the Regular Board Meeting. Date of the effective rules is proposed to be retroactive to September 14, 2023.

**It is the recommendation of the General Manager that the proposed rule revisions originally developed by the Rules Committee, the Board, District Staff, and vetted by the public be adopted.**

# **ATTACHMENT 4**

*to Plaintiff's First Amended  
Petition for Writ of Mandamus  
and Application for Temporary  
and Permanent Injunctive  
Relief*





## Agenda

**BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT  
Special Board Meeting  
District Office  
112 W. 3<sup>rd</sup> Street – Hearne, Texas  
Monday, June 3, 2024 – 10:00 a.m.**

**Notice is given that the Board of Directors of the Brazos Valley Groundwater Conservation District will hold a Special Board Meeting on Monday, June 3, 2024 @ 10:00 a.m. in the District Office.**

Call meeting to order

Pledge of Allegiance

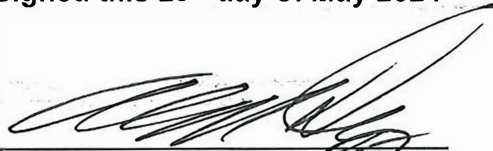
Declare quorum present

Public Comment

- a) Non-agenda items
- b) Agenda items

1. Discussion and possible action on authorizing the purchase of the H&R Block building located at 118 W. 3<sup>rd</sup> Street in Hearne, Texas.
2. Adjourn

**Signed this 29<sup>th</sup> day of May 2024**



**Alan M. Day, General Manager**

The Board of Directors may meet in closed session, pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071-551.076, to:

- (1) consult with attorney ;
- (2) deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (3) deliberate a negotiated contract for a prospective gift or donation to the District if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (4) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a Board member or District employee;
- (5) to receive information from employees or question employees, but not deliberate public business or agency policy that affects public business; and
- (6) to deliberate the deployment or specific occasions for implementation of security personnel or devices.

The Board may also meet in open session on these matters as required by the Texas Open Meetings Act, Texas Government Code § 551.102.

**\*\* Agenda items may be taken out of order at the discretion of the Board Chairman**

## **Item 1 | Real Estate Matters**

Due to the ever-increasing workload experienced by the District related to impending water production from the Goodland Farm Project (Upwell Water), there is a real need for the District to explore expanding office space to accommodate increased staffing and storage needs. District staff launched a survey of possible properties within the Hearne, Texas city limits that would fit the needs of needed expansion.

The Building Committee (Mark Carrabba, Jeff Kennedy, Jayson Barfknecht) met to discuss the properties that had been located. Suggestions were made as to how to proceed with a more in-depth investigation of some of the candidate properties.

District Staff worked with the owner of the H&R Block building and have settled on a purchase price of \$103,603.50 (885.5 sq ft @ \$117/sq ft).

**It is the recommendation by the Building Committee and General Manager to purchase the next door property (H&R Block building) from Legacy Builders 21, LLC as an addition to the existing District facility.**