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Brazos Valley Groundwater Conservation District
Board Members
112 West 3rd Street
Hearne, Texas 77859

Re: Preservation of Property Rights

Dear BVGCD Board Members Lisa Rolke, Chris Zeig, Jeff Kennedy, Gary Mechler, Stephen Cast, Mark Carraba, John Elliot, and Jayson Barfkneckt:

As you know, there is a pending lawsuit filed by TAMU, *Texas A&M University System vs. Brazos Valley Groundwater Conservation District*, in which TAMU seeks to force the District to accept as timely a contested case hearing request ("CCH request") submitted on September 5, 2024—years after BVGCD properly noticed, heard, and issued the permits that TAMU now seeks to challenge. UWBVF and its landowner partners intervened in that lawsuit and asked for declaratory judgment that all actions taken by the District between January 2023 and approximately July 2024 (the "De Facto Officer Period") are valid under the *de facto* officer doctrine. UWBVF moved for summary judgment on November 8, 2024. The District has the opportunity to defend and should defend the integrity of its permitting actions during the De Facto Officer Period, consistent with long-established law, logic, and sound public policy.

The Cities of Bryan and College Station have sought to intervene in TAMU's litigation to support TAMU's claims against the District. So that it is not lost during the behind-closed-doors executive session, particularly if the Bryan Public Works Director and College Station Water Services Director are present, it is critical for this Board to recognize the extraordinary adverse economic and legal impact this Board would be electing to impose on all landowners if you functionally revoke established, in-hand property rights to produce and to transport groundwater through inaction. Inaction by the Board in the face of these legal challenges is complicity with TAMU and the Cities. Fortunately, the Board can and should respect existing property rights and avoid interfering with or taking distinct investment-backed expectations in groundwater permits supporting a project that is years in the making and for which well drilling has started, millions of dollars of field and engineering work are in progress, and a chain of reliance has formed.

Now is the time for this Board to acknowledge its respect for private property rights and carry out its duty to apply its rules even-handedly. The TAMU litigation is not at all about the seven pending transport permits that will have a hearing at the State Office of Administrative Hearings prior to consideration by the Board. It is about an improper attempt by Brazos County entities to exploit a minor board composition issue to rewrite history and cause the taking,

damaging, or destruction of a select few landowners' property rights—which puts at risk everyone's property rights.

According to TAMU's construction, *all* permit applications considered by the Board during the De Facto Officer Period (the "De Facto Officer Period Applications") remain pending before the Board. By its assertion, no permittee can satisfy ratification rule prong 8.3(j)(2)(c).

> *(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)*** (emphasis added).

TAMU would have this Board cause **each and every one of those over seven dozen permits[1] to remain open to a contest—whether that contest is filed tomorrow, next week, or years from now and no matter who files such a contest**. As such, it imperils the many parties who received a permit, including, among others, Corpora Farms, DTB Investments LP, Mr. Vorwerk, the City of Bryan, and City of Hearne.

To avoid that outcome, the District should strongly defend its past actions under the de facto officer doctrine and stand by the plain-language reading of Rule 8.3(j).

A plain-language reading of 8.3(j)(2)(c), bolded above, does not sanction a CCH request (like TAMU's) filed ***after*** the date of the originally scheduled permit hearing on each De Facto Officer Period Application. First, subsection (c) uses past tense—the District "***did not receive***" any written notices of intent to contest the De Facto Officer Period Applications—meaning, written notices received (past tense) in the original window for doing so. Second, this phrase is also limited by the words "under rule 14.3.5(a)," which requires a request to be submitted "at least five (5) calendar days prior to the date of the hearing" (under the Rules at the time) or "by 5:00 p.m. the day before the permit hearing" (under current Rules). Rule 8.3(j) provides for the ratification to be "***without a permit hearing***." Therefore, "under rule 14.3.5(a)" must refer to a CCH request submitted prior to the date of the originally scheduled hearing. No other relevant "date of the hearing" exists. Reading Rule 8.3(j)(2)(c) to contemplate after-the-fact requests would render "under rule 14.3.5(a)" meaningless.

Following Texas law—including the *de facto* officer doctrine and basic principles of regulatory interpretation—leads to the just, legal, and equitable outcome for all parties affected by the De Facto Officer Period. We ask that the Board direct action to shut down TAMU's (and the Cities') invitation to disregard that law and take, damage, or destroy established property rights.

[1] The District listing varies but appears to include 91 permits, a few of which may qualify for 8.3(j)(a)(1), which also contains contingent language.

Sincerely,

Paulina Williams
on behalf of
UW Brazos Valley Farm LLC and Landowner Project Participants