CAUSE NO. 24-002626-CV-472

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

PLAINTIFF TEXAS A&M UNIVERSITY SYSTEM'S
PLEA TO THE JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Texas A&M University System ("Texas A&M System") files this Plea to the Jurisdiction seeking dismissal of the affirmative claims asserted by Intervenors UW Brazos Valley Farm LLC, Cula d'Brazos LLC, RH2O LLC, L. Wiese Moore LLC, Clifford A. Skiles III and James C. Brien (collectively, the "UW Intervenors"), and would respectfully show as follows:

I. INTRODUCTION

Texas A&M System initiated this mandamus proceeding to obtain narrow, specific relief in the form of an order compelling the Brazos Valley Groundwater Conservation District (the "District") and its General Manager to perform their statutory duty to refer certain matters to the State Office of Administrative Hearings ("SOAH") for contested case proceedings. Now the UW Intervenors are seeking to litigate the validity of the contested matters before this Court, rather than the District or SOAH, through affirmative claims for relief asserted against the Texas A&M System. The declaratory judgment and attorneys' fees claims asserted by the UW Intervenors are barred by Texas A&M System's sovereign immunity, however, and should be dismissed because the Court lacks subject matter jurisdiction over such claims.

II. BACKGROUND

The District has a vital role of ensuring the conservation of the State's water resources that are located in Robertson and Brazos Counties. TEX. CONST. art. XVI, § 59; TEX. WATER CODE § 36.0015(b); TEX. SPEC. DIST. LOCAL LAWS CODE §§ 8835.002, 8835.101. The District is charged with permitting the drilling and operation of wells within the District's boundaries, and the transportation of water outside the District. TEX. WATER CODE § 36.113; Rules of the Brazos Valley Groundwater Conservation District, Secs. 6 ("Spacing Requirements"), 7 ("Production Requirements"), 8 ("Registration and Permitting") and 10 ("Transfer of Groundwater Out of the District"). The District's rules dictate the process by which permits are considered and heard, and also provide a process by which contested permits shall be referred to SOAH. *See* Rules of the Brazos Valley Groundwater Conservation District, Sec. 14 ("Hearings").

On August 5, 2024, the District published the agenda for its regularly scheduled board meeting on August 8. The agenda disclosed that the District had determined that there was a lack of quorum for nine separate board meetings that the District held between February 9, 2023 and June 3, 2024. During this period affected by the lack of a quorum, the District's board purportedly considered numerous permit applications submitted by the UW Intervenors that comprise what is referred to as the Upwell project. In sum total, the UW Intervenors have applied for permits that would allow for the transport of more than 107,000 acre-feet of water per year for use outside of the District.

At its August 8 board meeting, the District considered – but did not vote to approve – amendments to its rules that would vest authority in its General Manager to grant and issue permits that were previously considered during the meetings that lacked a quorum. Notably, this authority, as set forth in the rule amendments, extended only to permit applications for which "the District

did not receive any written notices of intent to contest." *See* Rules of the Brazos Valley Groundwater Conservation District, Sec. 8.3(j)(2)(c) (as proposed on August 8, 2024 and subsequently adopted on September 12, 2024).

The District's published agenda for its September 12 board meeting provided notice of discussion and potential action on the proposed rule amendments and on certain permit applications filed by the UW Intervenors. On September 5, and prior to the District's September 12 board meeting, Texas A&M System submitted a written request for contested case hearings to be conducted by SOAH on numerous permits sought by the UW Intervenors for the Upwell project, but which had yet to be acted upon by a duly-constituted quorum of the board.[1]

At its September 12 meeting the board approved the rule amendments, and when questioned by the board, the District's General Manager acknowledged that the District had received timely requests for contested case hearings on the permit applications pertaining to the Upwell project. However, neither the District nor the General Manager confirmed or otherwise indicated that Texas A&M System's requests for contested case hearings would be acted upon and forwarded to SOAH for further proceedings.

Pursuant to the Water Code and the District's rules, Texas A&M System has the right to request contested case hearings on the permit applications pertaining to the Upwell project. *See* TEX. WATER CODE §§ 36.4051, 36.406, 36.416, 36.4165, 36.418(c); Rules of the Brazos Valley Groundwater Conservation District, Sec. 14.4(c-1), (c-2) & (r). Texas A&M System promptly and properly filed requests for contested case hearings on the permit applications pertaining to the Upwell project once the quorum defect was identified by the District, and prior to the District taking further action on those applications. Texas A&M System then commenced this action to

[1] This notice was in addition to an earlier, August 8, 2024 letter from Texas A&M System to the District contesting the subject permits and requesting a contested case hearing and related proceedings be conducted before SOAH.

compel the District and its General Manager to refer contested cases regarding pending groundwater production and transport permit applications to SOAH for further action. Now, the UW Intervenors have inserted themselves in this narrow action for procedural relief and seek a disposition on the merits of their permit applications through a declaration from this Court as to the validity of the District's prior action on their permits and an award of their attorneys' fees.

II. ARGUMENT

The claims asserted by the UW Intervenors are barred by the sovereign immunity vested in the Texas A&M System. As an arm of the state, Texas A&M System has sovereign immunity from suit unless and until the Texas Legislature waives such immunity. Texas A&M System's action in filing a mandamus petition requesting specific, limited procedural relief has not otherwise waived its immunity.

A. Legal Standard

Generally, sovereign immunity encompasses immunity from suit and immunity from liability. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). Sovereign immunity from suit defeats a court's subject matter jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004). In a suit against a governmental unit, the claimant must affirmatively demonstrate the court's jurisdiction by alleging a valid waiver of immunity. *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003). Waivers of immunity are construed narrowly under Texas law. *See, e.g., Tex. Adjutant Gen.'s Off. v. Ngakoue*, 408 S.W.3d 350, 353 (Tex. 2013). This Court "must determine at its earliest opportunity whether it has the constitutional or statutory authority to decide the case before allowing the litigation to proceed." *Miranda*, 133 S.W.3d at 226 (Tex. 2004).

B. Texas A&M System Possesses Sovereign Immunity

Texas A&M System is a state agency created by the Texas Legislature. As a university system, Texas A&M System is an institution of higher education and a political subdivision of the State. *See* Tex. Educ. Code § 85-89 (statutory authority governing Texas A&M University System). It is beyond dispute that Texas A&M System enjoys immunity from suit. *See Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007) (holding Texas A&M System's sovereign immunity from suit barred breach of contract claim); *Richards v. Tex. A&M Univ. Sys.*, 131 S.W.3d 550 (Tex. App.—Waco 2004, pet. denied) (sovereign immunity barred anti-retaliation claim against Texas A&M System). And, "no State can be sued in her own courts without her consent, and then only in the manner indicated by that consent." *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 (Tex. 2003) (*quoting Hosner v. De Young*, 1 Tex. 764, 769 (1847)). Absent the state's consent to suit, a trial court has no jurisdiction over claims against the state or its agencies or political subdivisions. *Tex. Dep't of Transp. v. Jones,* 8 S.W.3d 636, 638-39 (Tex. 1999).

C. UW Intervenors Have Not Pled a Waiver of Texas A&M System's Immunity

Because Texas A&M System has demonstrated that it is immune from suit, the UW Intervenors bear the burden to demonstrate a valid waiver of immunity allows their claims to proceed. *Dallas Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003). To determine if the claimant has met that burden, a court will consider the facts alleged by the claimant and, to the extent it is relevant to the jurisdictional issue, the evidence submitted by the parties. *Id*. Notably, UW Intervenors have not even attempted to allege a waiver of the Texas A&M System's immunity. And for good reason—Texas A&M System is generally afforded immunity from claims asserted under the Uniform Declaratory Judgment Act ("UDJA"), subject to limited, narrow exceptions that are not applicable here.

i. Texas A&M System retains immunity from the UW Intervenors' claims under the UDJA

UW Intervenors have brought a singular cause of action for declaratory judgment and for recovery of attorneys' fees associated with that claim. However, UW Intervenors' claim fails in the face of Texas A&M System's immunity and must be dismissed. Sovereign immunity bars actions under the UDJA against the state and its political subdivisions absent a legislative waiver. *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 620 (Tex. 2011). Importantly, the UDJA itself does not broadly waive immunity. The Texas Supreme Court has repeatedly made clear that the UDJA itself does not enlarge the trial court's jurisdiction but is "merely a procedural device for deciding cases already within a court's jurisdiction." *Tex. Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 388 (2011) (*quoting Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993)). The underlying action, if against the state or any of its political subdivisions, must be one for which immunity has expressly been waived. *Sefzik*, 355 S.W.3d at 622.

For example, the state may be a proper party to a declaratory judgment action that challenges the validity of a statute. *Id*. But UW Intervenors have brought no such claim. In *Sefzik* an aggrieved applicant for a permit to erect an outdoor advertising sign brought suit against the Texas Department of Transportation seeking a declaration that certain procedural provisions in the Administrative Procedure Act applied to TxDot's denial of his application. *Id.* at 620. The Texas Supreme Court confirmed the long-standing principle that, although the Legislature has recognized a limited waiver immunity of UDJA claims that challenge the *constitutionality* of a statute, there is no waiver of the state's immunity when a claimant seeks a declaration of his or her rights under a statute or other law. *Sefzik,* 355 S.W.3d at 620; *see also City of El Paso v. Heinrich*, 284 S.W.3d 366, 380 (Tex. 2009). Here, UW Intervenors are seeking a declaration from this Court addressing prior actions taken by the District on their permit applications and requesting that this Court declare

their permits to have been properly issued despite the District's own determination of a lack of quorum. The UW Intervenors assert no challenge to the constitutionality of any statute, rule or other authority. As a result, the UW Intervenors' declaratory judgment claim does not fall within the limited class of claims under the UDJA for which immunity has been waived.

ii. No other waiver of Texas A&M System's immunity has occurred

Texas A&M System seeks one thing through this mandamus action against the District and the General Manager—for the Court to compel that they follow the law and refer certain contested cases to SOAH. Texas courts have recognized circumstances that alter the scope of immunity when a governmental unit files suit. In such circumstances, Texas courts have concluded that when a governmental entity asserts claims for affirmative relief, opposing claims that are germane, connected, and properly defensive to the governmental entity's claims are not barred by immunity, *but only to the extent that the claims of the private litigant offset the monetary recovery sought by the governmental entity*. *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 377 (Tex. 2006) (emphasis added). *Reata* reasons that it is unfair to allow a governmental entity to assert affirmative claims for monetary relief on the one hand, while on the other hand claiming immunity as to counterclaims asserted against it. *Id*. at 375–76.

Here, however, Texas A&M System is not seeking any monetary relief of its own, but rather seeks only to enforce an existing legal duty on the part of the District and its General Manager. And Texas A&M System is certainly not seeking any relief from the UW Intervenors. The UW Intervenors' claims seek a different type of relief entirely: a declaration of their rights with respect to action previously taken by the District on their permit applications. If granted, the mandamus relief sought by Texas A&M System will operate only to compel the District to send certain contested cases to SOAH for further proceedings and provide a forum for, among other things, airing out the UW Intervenors' challenges to the timeliness of Texas A&M System's requests for

contested case hearings. It is (and should be) the District, via a proposal for decision issued by SOAH, that will ultimately determine the final action to be taken on the UW Intervenors' permits. Fundamentally, the UW Intervenors' declaratory judgment action seeks to require this Court to step into the District's shoes and determine the validity of the UW Intervenors' permits, and the timeliness of Texas A&M System's requests for contested case hearings. No waiver of Texas A&M System's immunity exists to permit such action.

Dismissal of the UW Intervenors' UDJA claim is supported by the vital public policy surrounding the contours of sovereign immunity. In *Harris Cnty. v. Mireles*, a county sued a motorist for damages arising out of a car accident involving the motorist and a county constable. 672 S.W.3d 663 (Tex. App.—Houston [14th Dist.] 2023, pet. filed). The motorist responded with counterclaims against the county, and the motorist's wife and insurance company filed petitions in intervention against the county. *Id*. The county moved to dismiss all claims on the basis of its immunity. *Id*.

Considering the county's plea to the jurisdiction, the *Mireles* court held that (1) the trial court lacked jurisdiction over the motorist's claims against the county for damages exceeding amounts necessary to offset county's claims and, (2) that the county could properly invoke governmental immunity against intervenors' claims. *Id.* The court reasoned that the limited immunity waiver in *Reata* applied only to the claims brought by the governmental entity against the motorist, and they did not disturb the county's immunity from suit against the claims brought by the intervening parties noting that "*Reata* did not discuss or apply its reasoning to the claims of any intervenors or third parties." *Id*. Applying *Reata* the court explained:

> [b]y filing suit, Harris County chose to litigate, and spend public money on pursuing claims, against [the motorist]. It did not choose to sue the intervenors, nor did it choose to spend public money defending the intervenors' claims. Disregarding the

> doctrine of immunity in connection with the county's defense of those claims is not consistent with Reata's reasoning.

Mireles, 672 S.W.3d at 673. Likewise, there is no grounds for concluding that Texas A&M System's narrow mandamus action against the District and its General Manager operates to waive Texas A&M System's immunity from the claims brought by the UW Intervenors.

D. Texas A&M System's Immunity Bars The UW Intervenors Claim for Attorneys' Fees

The UW Intervenors also request that this Court award recovery of their attorneys' fees incurred to prosecute their UDJA claim against the Texas A&M System. There is no basis to support such an award. Texas A&M System enjoys immunity from the UW Intervenors' UDJA claim, which they cite as the basis for their attorneys' fees request. Notably the three cases cited by UW Intervenors to support their claim for attorneys' fees all involve instances where the governmental entity's immunity had been expressly waived for the underlying UDJA claim. *See Tex. Educ. Agency v. Leeper,* 893 S.W.2d 432, 446 (Tex. 1994) (permitting attorneys' fees recovery for UDJA claim challenging state law where governmental entity was a necessary party); *Tex. Tel. Ass'n v. Pub. Util. Comm'n of Tex*., 653 S.W.3d 227, 249 (Tex. App.—Austin 2022, no pet.) (immunity was not implicated via ultra vires exception); *City of Arlington v. Randall*, 301 S.W.3d 896, 908 (Tex. App.—Fort Worth 2009, pet. denied) (immunity was waived for constitutional violations). Here, there has been no such waiver and the UW Intervenors' UDJA claim and related request for attorneys' fees are barred by Texas A&M System's immunity.

III. CONCLUSION

For the foregoing reasons, Plaintiff Texas A&M University System prays that the Court enter an order dismissing all claims asserted by the UW Intervenors, with prejudice to re-filing same, and for 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*

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CERTIFICATE OF SERVICE

This is to certify that on November 21, 2024, a true and correct copy of the foregoing was served in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure on the parties or their counsel of record listed below:

/s/ Breck Harrison
Breck Harrison