

SOAH DOCKET NO. 900-25-04017

TRANSPORT PERMIT APPLICATIONS	§	
BY UW BRAZOS VALLEY FARM LLC AS	§	
CO-APPLICANT WITH THE	§	BEFORE THE STATE OFFICE
FOLLOWING: RH2O LLC (BVTP-002),	§	
CLIFFORD A. SKILES III (BVTP-003),	§	
JAMES C. BRIEN (BVTP-004), L. WIESE	§	OF
MOORE LLC (BVTP-005), FAZZINO	§	
INVESTMENTS LP (BVTP-006), ELY	§	ADMINISTRATIVE HEARINGS
FAMILY PARTNERSHIP LP (BVTP-007),	§	
CULA D’BRAZOS LLC (BVTP-008)	§	

**APPLICANTS’ MOTION TO SET PROCEDURAL SCHEDULE AND  
ASSIGN DISCRETE DOCKET NUMBERS FOR EACH APPLICATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Applicants (as defined below) respectfully request that your honor issue an order directing the parties to file by December 16, 2024 an agreed procedural schedule or opposing schedules if an agreement is not reached.

Additionally, Applicants request that your honor assign discrete docket numbers to each application for which there is a unique co-applicant, while hearing these applications in a single proceeding.

**I. Background**

On January 14, 2024, each of RH2O LLC, Clifford A. Skiles III, James C. Brien, L. Wiese Moore LLC, Fazzino Investments LP, Ely Family Partnership LP, and Cula D’Brazos LLC filed with the Brazos Valley Groundwater Conservation District (the “District”) a distinct groundwater transport application related to their individually held groundwater operating permits (the “Applications”). These applicants each entered separate transactions with UW Brazos Valley Farm LLC (“UW Farm”) and together the Applications are intended to support a regional water supply

project. On March 15, 2024 UW Farm became co-applicant with each of the seven above-listed applicants at the District's request and for the purpose of agreeing to a condition in the requested permits on the total transport for the regional water supply project (UW Farm and above-listed applicants, together, the "Applicants"). On March 21, 2024, the General Manager of the District declared the Applications administratively complete. On June 3, 2024, UW Farm delivered a letter to the District, requesting, in the event a timely and properly filed contested case hearing request is received by the District, that the District contract with the State Office of Administrative Hearings ("SOAH") to conduct such a hearing. Between June 14 and June 17, 2024, several entities and individuals requested a contested case hearing on the Applications. At its June 18, 2024 public hearing on the Applications, the District board determined the following individuals filed timely contests to the Applications:<sup>1</sup> Texas A&M University System, Brazos County, City of Bryan, City of College Station, and Ermine Dieckman (collectively, the "Protestants").

On September 12, 2024, the District's board of directors approved an interlocal agreement with SOAH to conduct a hearing on the Applications, and on October 10, 2024, the District held a preliminary hearing, named the parties (Protestants, Applicants, and the District's General Manager), and referred the contested case hearing to SOAH mediation prior to the commencement of discovery. The mediator offered multiple dates in December, January, and February of which Protestants only agreed to dates in February. SOAH has scheduled mediation in this proceeding to take place on February 10, 2025.

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<sup>1</sup> Diane C. Garcia also filed a timely hearing request, which was withdrawn on August 1, 2024.

## **II. Directing the Parties to Submit Procedural Schedules Would Ensure an Efficient Hearing and Avoid Unnecessary Delay**

Upon request by an applicant or other party, a groundwater conservation district “shall contract” with SOAH to conduct a contested case hearing.<sup>2</sup> Once SOAH has jurisdiction, the hearing is subject to SOAH’s rules,<sup>3</sup> including SOAH’s authority and duty to “conduct a full, fair, and efficient hearing” and “take action to avoid unnecessary delay.”<sup>4</sup> As the Texas Supreme Court succinctly states: judicial proceedings “should not be drawn out but should be disposed of with dispatch.”<sup>5</sup>

Efficiency and avoiding delay are of particular importance in this matter. Applicants are seeking transport permits to transport their privately-owned groundwater, for which production permits were issued in 2023, from Robertson County to Bell, Milam, Travis, and Williamson Counties for regional water supply. In short, Applicants expect to be a key source of a vital resource for a rapidly growing area of Texas with a critical need for water supply.<sup>6</sup>

Applicants submitted these Applications almost a full year ago. In the time since, the District took three months to set the administratively complete Applications for a public hearing before the District board, and took an additional four months to refer the Applications to SOAH, at which point the Protestants selected among the latest of the dates offered by SOAH for mediation.

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<sup>2</sup> Tex. Water Code § 36.416(b).

<sup>3</sup> Tex. Water Code § 36.416(a).

<sup>4</sup> 1 Tex. Admin. Code § 155.153(a)(1)-(2). SOAH’s rules are to be construed “to ensure the just and expeditious determination of every matter.” 1 Tex. Admin. Code § 155.3(g).

<sup>5</sup> *Matlock v. Matlock*, 249 S.W.2d 587, 590 (Tex. 1952).

<sup>6</sup> *See, e.g.*, City of Georgetown, INTEGRATED WATER RESOURCES PLAN, EXECUTIVE SUMMARY, May 2023, at 10, (“A new [water] supply must be on line by 2030 to avoid supply shortages under current growth projections”), [https://gus.georgetown.org/wp-content/uploads/sites/47/2023/08/Georgetown-IWRP\\_Executive-Summary\\_FINAL-2.pdf](https://gus.georgetown.org/wp-content/uploads/sites/47/2023/08/Georgetown-IWRP_Executive-Summary_FINAL-2.pdf).

To head off any future delay, Applicants asks your honor to direct the parties to file by December 16, 2024 an agreed procedural schedule or opposing schedules if an agreement is not reached. While Applicants have every desire and intention to engage in a meaningful mediation on February 10, settlement discussions have occurred already and could be ongoing now if Protestants were willing. By establishing a procedural schedule prior to mediation, the parties will be well-situated to efficiently move to, and through, discovery, and toward a hearing on the merits; that clarity will incentivize all parties to enter the mediation in good faith.

### **III. Assigning Discrete Docket Numbers to Each Application Would Promote Efficiency and Order**

The Applications are before SOAH in one docket because each individual Application relates to a collective project for which each Applicant has agreed to an aggregated cap on the total volume of groundwater that may be transported. And while UW Farm is a common co-applicant to each of the seven above-listed applications, the accompanying co-applicant is unique in each. Each of these seven co-applicants holds discrete private property rights in their land and in the groundwater below,<sup>7</sup> and each Application relates to a unique set of groundwater production permits for wells in specific locations in Robertson County.

Because each Application impacts the private property rights of a unique co-applicant, Applicants asks that each Application be assigned its own, discrete docket number to be used throughout this proceeding. Pairing up each Application with a specific docket number will assist SOAH and the parties in maintaining order while efficiently progressing through SOAH's hearing and when the District board ultimately rules on each discrete Application.<sup>8</sup>

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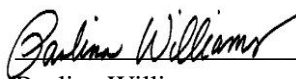
<sup>7</sup> *Edwards Aquifer Auth. v. Day*, 369 S.W. 814, 832 (Tex. 2012).

<sup>8</sup> *See* 1 Tex. Admin. Code § 155.153(a)(1), (3).

#### IV. Conclusion

For the foregoing reasons, Applicants respectfully requests that SOAH (1) issue an order directing the parties to file by December 16, 2024 an agreed procedural schedule or opposing schedules if an agreement is not reached and (2) assign discrete docket numbers to each application to which UW Farm has a unique co-applicant.

Respectfully submitted,

By:   
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**Counsel for Applicants**

## CERTIFICATE OF CONFERENCE

I certify that I conferred with each party to this proceeding, via email, about this motion on December 5, 2024. On December 8, 2024, counsel for the Brazos Valley Groundwater Conservation District responded, via email, that the District agrees to a December 16, 2024 deadline to submit proposed schedule(s) to SOAH and does not object to assigning separate docket numbers to each Application, so long as the Applications are heard in a single, consolidated proceeding. As of the time of filing and service of this motion, no other party has responded.

  
\_\_\_\_\_  
Paulina Williams

## CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December 2024, I e-filed and served a true and correct copy of the foregoing motion via electronic mail to the following:

**For Ely Family Partnership LP**

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Paulina Williams

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**PROPOSED ORDER GRANTING  
APPLICANTS’ MOTION TO SET PROCEDURAL SCHEDULE AND  
ASSIGN DISCRETE DOCKET NUMBERS FOR EACH APPLICATION**

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On December 9, 2024, UW Brazos Valley Farm LLC (“UW Farm”), RH2O LLC, Clifford A. Skiles III, James C. Brien, L. Wiese Moore LLC, Fazzino Investments LP, Ely Family Partnership LP, and Cula D’Brazos LLC (together, the “Applicants”) filed a Motion to Set Procedural Schedule and Assign Discrete Docket Numbers for Each Application. On \_\_\_\_\_, \_\_\_\_\_ filed their response(s).

Having considered all arguments, the Administrative Law Judge hereby **GRANTS** Applicants’ Motion. The parties are hereby **ORDERED** to comply with the following:

1. By December 16, 2024, the parties are directed to file an agreed procedural schedule or opposing schedules if an agreement is not reached. Such procedural schedule(s) shall include:
  - a. Date(s) for a prehearing conference, if needed, to hear argument on conflicting proposed schedules and address the District’s submission of applicable rules or policies as described in Tex. Water Code § 36.416(e)
  - b. Discovery period
  - c. Deadline to provide initial disclosures as described in TRCP 194.2(b)



- d. Deadline(s) to designate fact and expert witnesses and provide materials described by TRCP 195.5(a)
  - e. Deadline(s) to supplement designation of expert witnesses
  - f. Deadline(s) to submit prefiled testimony and exhibits
  - g. Deadline(s) for objections and motions to strike testimony and exhibits, and responses
  - h. Deadline(s) for any dispositive motions, and responses
  - i. Date(s) for prehearing conference, if needed
  - j. Date(s) for hearing on the merits
2. The Administrative Law Judge hereby assigns the following docket numbers to the below-listed applications, and the parties are directed to include all docket numbers in subsequent filings in this proceeding:
- a. RH2O LLC (BVTP-002) – Docket No. \_\_\_\_\_
  - b. Clifford A. Skiles III (BVTP-003) – Docket No. \_\_\_\_\_
  - c. James C. Brien (BVTP-004) – Docket No. \_\_\_\_\_
  - d. L. Wiese Moore LLC (BVTP-005) – Docket No. \_\_\_\_\_
  - e. Fazzino Investments LP (BVTP-006) – Docket No. \_\_\_\_\_
  - f. Ely Family Partnership LP (BVTP-007) – Docket No. \_\_\_\_\_
  - g. Cula D’Brazos LLC (BVTP-008) – Docket No. \_\_\_\_\_

**SIGNED** \_\_\_\_\_, 2024.

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REBECCA SMITH  
Administrative Law Judge  
State Office of Administrative Hearings