

SOAH DOCKET NO. 900-25-04017

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

**PROTESTANT TEXAS A&M UNIVERSITY SYSTEM’S  
VERIFIED MOTION TO ABATE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Protestant Texas A&M University System (“Texas A&M System”) files this Verified Motion to Abate the above-referenced proceeding, and respectfully shows as follows:

**I. Factual and Procedural Background**

Created pursuant to authority granted by the Texas Constitution, the Brazos Valley Groundwater Conservation District (“District”) has been entrusted by the State and the public with the conservation of the State’s water resources located in Robertson and Brazos Counties. The District’s activities are particularly significant because they impact the water resources available to serve 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.

UW Brazos Valley Farm LLC (“Upwell”), a foreign entity that owns land in the District, has applied for permits that would allow it to siphon over 107,000 acre-feet of water per year out of the Simsboro Aquifer and transport it away from Brazos and Robertson County residents. The size and scope of the project alone has necessitated the need for the District to expand its own offices.

As part of this groundwater export project, known as the Goodland Farm Project, Upwell has also entered into agreements with seven local landowners, who in the aggregate have applied for thirty-two production permits and seven transport permits—for an aggregated transfer of up to 57,718 acre-feet of water per year out of the District. These seven transport permit applications are the subject of this proceeding, but the applications for the thirty-two production permits upon which they are predicated are not.

In addition, Upwell also has applied for sixteen production permits and one transport permit—for the transfer of up to 49,999 acre-feet of water per year out of the District. None of these permit applications are currently part of this proceeding either.

Pursuant to the Water Code and District Rules, Texas A&M System has the right to request contested case hearings on the Goodland Farm Project permit applications. Texas A&M System has exercised that right as to all of the permit applications addressed above. A mandamus action is currently pending in the Brazos County District Court due to the District's delay in referring all of these interrelated permit applications to SOAH for contested case hearings. The only exception is the seven transport permit applications currently before SOAH in this proceeding, which reached SOAH before the others were delayed.

This proceeding should be abated until the mandamus proceeding is resolved and all the permit applications pertaining to the Goodland Farm Project are referred to SOAH for review. When considering the standard for abatement, Texas courts generally look to three basic considerations: (1) promoting justice; (2) avoiding prejudice; and (3) promoting judicial economy. *Tex. Farmers Ins. Co. v. Cooper*, 916 S.W.2d 698, 701 (Tex. App.—El Paso 1996, no writ) (citing *State Farm Mut. Auto. Ins. Co. v. Wilborn*, 835 S.W.2d 260, 261 (Tex. App.—Houston [14th Dist.] 1992, no writ). The same considerations are instructive here. An abatement would: (1) promote justice by ensuring consistent outcomes for all the Goodland Farm Project permit applications;

(2) avoid prejudice by effectively curing the District's delay instead of allowing the District's actions to impact the fairness of the administrative process; and (3) promote judicial economy by creating a consolidated proceeding wherein the ALJ could grant and quantify or deny each production permit and then predicate any grant or denial of their associated transport permits accordingly and thereby effectively avoid congesting the docket, wasting time, and incurring unnecessary costs.

## **II. This Proceeding Should be Abated Until the Mandamus Proceeding is Resolved.**

As previously mentioned, Texas A&M System properly requested contested case hearings for *all* the Goodland Farm Project permit applications, but after sending just the seven transport permits to SOAH, the District thereafter refused to schedule preliminary hearings or even refer the contested case hearings to SOAH, despite Texas A&M System's timely filed requests. Since such referrals are mandatory under Section 36.416 of the Texas Water Code, Texas A&M System was forced to file a claim for mandamus relief in the Brazos County District Court seeking a court order requiring the District to refer the permit applications to SOAH for further proceedings in accordance with the prescribed administrative process. *See* Cause No. 24-002626-CV-472. Through this motion, Texas A&M System respectfully requests that the ALJ abate this proceeding—a contested case hearing on seven of the fifty-five pending Goodland Farm Project permit applications—for only a few months to allow for the mandamus proceeding to run its course and ensure all properly contested permit applications are pending at SOAH before the administrative review process begins.

### **A. An Abatement Would Promote Justice by Ensuring Consistent Outcomes.**

Under the applicable District rules, Texas A&M System has exercised its right to request contested case hearings for various Goodland Farm Project permit applications. At its core, the challenge to each and every permit application is identical: the applicants must meet their burden

to prove that each permit complies with the District's rules. It is in the interest of justice that the applicants are held to the same standard across all permit applications challenged on this basis. An abatement of this proceeding to allow for the District to refer the remaining contested Goodland Farm Project permit applications to SOAH would ensure that each similarly situated permit application undergoes an identical administrative review.

Specifically, a piecemeal approach to the consideration and issuance of Goodland Farm Project permit applications would effectively put the cart before the horse given the current circumstances. Seven transport permit applications are currently before the ALJ for review, but the corresponding production permits have not yet been issued. The transport permit applications are entirely predicated on these production permits. If the production permit applications are invalid, or if the amount of water that the underlying production permits authorize for removal from the Simsboro Aquifer is reduced from the requested amounts through the administrative review process, then the corresponding transport permits are inherently affected. After all, a transport permit is meaningless without a corresponding production permit.

Justice requires that SOAH considers the aggregate impact of the Goodland Farm Project when considering all of the permits related to it. If this docket is abated for just a few months, then all Goodland Farm Project permit applications can be consolidated into a single docket, and the ALJ can ensure that the outcomes for each permit application are consistent with one another and congruent with the overall goal of the administrative review process.

B. An Abatement Would Avoid Prejudice Created by the District's Delay.

Although Texas A&M System properly contested the Goodland Farm Project permit applications at issue in the related mandamus proceeding, the District has refused to schedule preliminary hearings in violation of its own rules. If not for the District's delay, those Goodland Farm Project permit applications would be pending before SOAH along with this docket. If the

district court concludes that the District has unlawfully refused to act and issues the requested mandamus relief, then the District will be forced to refer the permit applications to SOAH. However, if the contested case hearing outcomes are affected because the transport permit applications at issue in this proceeding were administratively reviewed first, then Texas A&M System would have undeniably suffered prejudice from the District's unlawful delay. Thus, an abatement of this proceeding is necessary to prevent this scenario and avoid any unfair prejudice to Texas A&M System.

On the other hand, an abatement would not cause prejudice to the applicants. Since the production permit applications pending in the mandamus proceeding are interrelated to the transport permit applications in this docket, the Goodland Farm Project cannot proceed in full until all of its permits have been approved and issued. And any delay was indisputably caused by the District's refusal to refer the permit applications to SOAH, not Texas A&M System's request to cure the effects of the District's delay by abating this proceeding. Additionally, the mandamus proceeding is expected to go to trial by the first week of May, meaning that an abatement would only postpone this proceeding for no more than three months. Considering the extensive permit approval process, a three-month delay is negligible, and any purported prejudice would be minimal, especially when compared to the potential risk of inconsistent outcomes.

C. An Abatement Would Promote Judicial Economy by Allowing for an Efficient Docket.

The basic premise of Texas A&M System's challenge to the Goodland Farm Project permit applications is that all permits require a thorough review to ensure compliance with the District's rules. Conducting this review over the course of multiple dockets and various contested case hearings would be a vast waste of judicial resources. A consolidated docket that includes the transport permit applications currently pending before SOAH and the production permit

applications subject to the mandamus proceeding would provide the most efficient and effective use of SOAH's time, effort, and resources.

Texas A&M System's contest of the pending transport permit applications is interrelated to the outcome of any contested case hearing involving the Goodland Farm Project production permit applications. If any production permit applications currently held up by the mandamus proceeding are revised or not approved by the District once they complete the administrative review process, then the corresponding transport permits—even if already approved by the District—must be reconsidered. Upwell and the co-applicant landowners cannot transport water that they are not permitted to produce. In that instance, the judicial resources spent on administratively reviewing the transport permit applications would have been wasted. Thus, it is imperative that any production permit applications and corresponding transport permit applications are at least considered in the proper order, if not simultaneously in the same docket.

Ultimately, multiple dockets operating on separate timetables would only create preventable congestion on SOAH's docket and increase unnecessary costs for all parties involved. And when considering that Texas A&M System is a public state university system, that money could be going back into investing in the future of Texas' education system, cutting-edge research, and other public outreach programs.

### **III. Once Referred to SOAH, Any Related Goodland Farm Project Permit Applications Should be Consolidated into this Docket.**

The parties expect the district court to make a decision regarding the status of the production permit applications caught up in the mandamus proceeding by early May. If the court grants Texas A&M System's request for mandamus relief, then the District will be subject to a court order requiring it to refer the properly contested permit applications to SOAH. The preliminary hearings will be set, hopefully on an expedited basis given the unnecessary delay thus

far, and the permit applications will then be referred to SOAH for contested case hearings. At that point, the properly contested applications should be consolidated into this docket, and the ALJ would then have the discretion to effectively manage the docket. Effective management could include delineating between transport permit applications and production permit applications, further consolidating contested case hearings based on the geographic reach of each permit application, or some other efficient method to work through the consolidated docket. Ultimately, a consolidated docket of all pending Goodland Farm Project permit applications would be the most efficient and effective way to navigate the contested case hearing process.

**CONCLUSION & PRAYER**

Texas A&M System prays that the ALJ grant this motion and abate this proceeding until Cause No. 24-002626-CV-472, pending before the Brazos County District Court, is fully adjudicated and the related permit applications are either referred to SOAH or otherwise approved.

Respectfully submitted,

By: /s/ Lynn Sherman

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***Attorneys for Protestant Texas A&M  
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**VERIFICATION**

My name is Lynn Sherman. I am over 21 years of age, and I am fully competent to make this Verification. I am an attorney at Jackson Walker L.L.P., the attorney of record for Protestant Texas A&M University System. I have reviewed the foregoing Verified Motion to Abate and verify that the facts contained therein are true and correct. Further, this request to abate is filed in good faith and is not sought for the purposes of obstruction or delay but rather is sought so that justice may be done. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas on the 4th day of February, 2025.



Lynn Sherman



## **CERTIFICATE OF SERVICE**

This is to certify that on February 4, 2025, 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/ Lynn Sherman*

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