

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

FAZZINO INVESTMENTS, LP	§	
for itself and all others similarly	§	
situated,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CASE NO. 6:25-cv-00001-ADA-DTG
	§	
BRAZOS VALLEY GROUNDWATER	§	
CONSERVATION DISTRICT,	§	
	§	
<i>Defendant.</i>	§	

**DEFENDANT BRAZOS VALLEY GROUNDWATER  
CONSERVATION DISTRICT'S ORIGINAL ANSWER**

Defendant Brazos Valley Groundwater Conservation District (the "District") files this Original Answer and respectfully shows as follows:

**ORIGINAL ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant provides the following responses to the allegations asserted against them in Plaintiffs' Original Complaint (Doc. 1):

**NATURE OF THE CASE**

1. Defendant admits that its Rules govern the production of groundwater in Brazos and Robertson counties, Texas. Defendant acknowledges the nature of Plaintiff's claims but denies that such claims have any merit and specifically denies that its Rules constitute a taking of Plaintiff's groundwater without just compensation.

2. Defendant acknowledges that Plaintiff seeks declaratory and injunction relief, attorney fees, and court costs. Defendant denies, however, that Plaintiff is entitled to any relief by its suit.

### **JURISDICTION AND VENUE**

3. Defendant admits that the statutory provisions identified are within this Court's jurisdiction. Defendant denies any allegation of wrongdoing, express or implied, in paragraph 3 of the Complaint. Defendant specifically reserves the right to challenge the subject-matter jurisdiction of the Court should the facts be developed supporting such a challenge.

4. Defendant admits that its principal place of business and operations is within the Western District of Texas. Defendant denies any allegation of wrongdoing, express or implied, in paragraph 4 of the Complaint.

5. Defendant admits that the location of the District's principal office is within the Waco Division of the Western District of Texas. Defendant denies any allegation of wrongdoing, express or implied, in paragraph 5 of the Complaint.

### **PARTIES**

6. Defendant admits the allegations regarding the corporate status and place of operations in paragraph 6 of the Complaint, but denies all allegations of wrongdoing and/or causing harm.

7. Defendant cannot admit or deny the allegations regarding property ownership in paragraph 7 of the Complaint without further information regarding the purported Class, but denies all allegations of wrongdoing and/or causing harm. Defendant further denies that a class action should be certified inasmuch as the

purported class action meets none of the requirements of Federal Rule of Civil Procedure 23.

8. Defendant admits the allegations in paragraph 8 of the Complaint.

### **FACTS**

9. Defendant admits the allegations in paragraph 9 of the Complaint.

10. Defendant admits the allegations in paragraph 10 of the Complaint.

11. Defendant admits the Rules contain spacing requirements for new wells as alleged in paragraph 11 of the Complaint. Defendant states that the Rules, and specifically Section 6.1 of the Rules, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied.

12. Defendant admits the Rules contain spacing requirements for new wells as alleged in paragraph 12 of the Complaint. Defendant states that the Rules, and specifically Section 6.1 of the Rules, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied.

13. Defendant admits the Rules contain production limits as alleged in paragraph 13 of the Complaint. Defendant states that the Rules, and specifically Section 7.1 of the Rules, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied.

14. Defendant admits that the District's Rules were amended to be effective on or about September 14, 2023. Defendant denies any other allegations in

paragraph 14 of the Complaint, including specifically that the Rules were wrongfully amended.

15. Defendant admits that the District's Rules were amended to be effective on or about September 14, 2023. The District denies that the Rules were unlawfully amended as alleged in paragraph 15 of the Complaint. Further, Defendant states that the Rules, and specifically Section 6.1 of the Rules, effective both before and after September 14, 2023, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied. Defendant denies all other allegations in paragraph 15 of the Complaint.

16. Defendant admits that the District's Rules were amended to be effective on or about September 14, 2023, and that the Amended Rules apply to any wells not permitted prior to September 14, 2023. Defendant denies that the Rules were unlawfully amended as alleged in paragraph 16 of the Complaint. Further, Defendant states that the Rules, and specifically Section 6.1 of the Rules, effective both before and after September 14, 2023, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied. Defendant further denies Plaintiff's allegations as to the "practical effect" of the rule amendments or that the rule amendments caused any harm or taking. Defendant denies all other allegations in paragraph 16 of the Complaint.

17. Defendant admits that the District's Rules were amended to be effective on or about September 14, 2023 and that the Amended Rules apply to any wells not

permitted prior to September 14, 2023. The District denies that the Rules were unlawfully amended and denies any claim of condemnation resulting from the amendment of the District's Rules as alleged in paragraph 17 of the Complaint. Further, Defendant states that the Rules, and specifically Section 7.1 of the Rules, effective both before and after September 14, 2023, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied. Defendant denies all other allegations in paragraph 17 of the Complaint.

18. Defendant admits that the District's Rules were amended to be effective on or about September 14, 2023 and that the Amended Rules apply to any wells not permitted prior to September 14, 2023. The District denies that the Rules were unlawfully amended and denies deprivation of Plaintiff's groundwater rights as alleged in paragraph 18 of the Complaint. Further, Defendant states that the Rules, and specifically Sections 6.1 and 7.1 of the Rules, effective both before and after September 14, 2023, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied. Defendant denies all other allegations in paragraph 18 of the Complaint.

19. Defendant admits that the District's Rules were amended to be effective on or about September 14, 2023 and that the Amended Rules apply to any wells not permitted prior to September 14, 2023. The District denies that Plaintiff, or anyone else, is being improperly or unfairly restricted from submitting an application for the production of groundwater or that their property has been taken. Plaintiff's

allegations give no consideration to when a landowner drilled or began developing its groundwater well vis-à-vis the District's promulgation of its Rules. The statutes that govern groundwater ownership and permitting in Texas states that a groundwater conservation district is not required to issue permits based on the number of surface-acres owned by the landowner and expressly allows for different categories of permitting that take into account factors such as historic and existing use and wells. Tex. Water Code §§ 36.002, 36.113, 36.116, 36.122. Further, Defendant states that the Rules, effective both before and after September 14, 2023, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied. Defendant denies all other allegations in paragraph 19 of the Complaint.

20. Defendant denies that the Rules were unlawfully amended and denies deprivation of Plaintiff's groundwater rights as alleged in paragraph 20 of the Complaint. Defendant denies all allegations of condemnation. Plaintiff's allegations give no consideration to the District's authority to create categories of permits that account for factors such as historic and existing use. Further, Defendant states that the Rules, effective both before and after September 14, 2023, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied. Defendant denies all other allegations in paragraph 20 of the Complaint.

21. Defendant admits that the District's Rules were amended to be effective on or about September 14, 2023 and that the Amended Rules apply to any wells not

permitted prior to September 14, 2023. The District denies that the Rules were unlawfully amended and denies deprivation of Plaintiff's groundwater rights as alleged in paragraph 21 of the Complaint. Each permit is considered on an individual and fact-dependent basis, and the Rules have not categorically prohibited permitting of new wells after September 14, 2023. Further, Defendant states that the Rules, effective both before and after September 14, 2023, speak for themselves. To the extent Plaintiff's characterizations of the Rules are inconsistent with the Rules themselves, those allegations are denied. Defendant denies all other allegations in paragraph 21 of the Complaint.

### **CLASS ACTION ALLEGATIONS**

22. Defendant denies that there is proper class certification in this action. Federal Rule of Civil Procedure 23, allows for class certification "only if"

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23.

Plaintiff has not pleaded the requisite facts to support class certification for this case. And Defendant denies that the actual facts would support class certification.

23. Defendant denies the there is proper class certification in this action. The definition of the class and the number of class members contemplated relies on an improper application of the District's Rules. Plaintiff alleges that the class

consists of all landowners who own at least 35 contiguous acres in Brazos and Robertson Counties, resulting in several hundred potential class members. However, the District's Rules are applied to submitted permit applications and decisions on well permitting are based on the contents of that application—all landowners who own sufficient acreage is not a proper class for this action. Plaintiff has not identified how many of these landowners have submitted a permit or plan to do so, such to support the element that the joinder of the potential plaintiffs is impractical.

24. Defendant denies all allegations of wrongdoing. The District lawfully promulgated and implemented its Rules. Further, each permit is considered on an individual basis, necessarily implicating different facts. For example, and as alleged in paragraphs 17 and 21 of the Complaint, there is the matter of geometry that uniquely impacts each property and potential production limits sought by permit applications. The geographic and geometric considerations of each application are but one of a set of unique considerations that distinguish potential Class Members.

25. Defendant denies all allegations of wrongdoing. The District lawfully promulgated and implemented its Rules. Specifically, the District denies any allegation of taking. The question of taking here is not a common question as to all landowners who did not seek a permit prior to September 14, 2023. Rather, permit approval or denial (and there has been no allegation that any permit has been sought and denied in this Complaint), is based on the specific facts set out in the application. To the extent there is a denial of a permit application, those reasons may differ among applicants. Prior permitting and use of other wells permitted before September 14,



2023 is not categorical foreclosure to new permitting within the District. General legal principles such as entitlement to declaratory relief or attorney's fees are insufficient to establish commonality of claims.

26. Defendant denies all allegations of wrongdoing. The District lawfully promulgated and implemented its Rules. Specifically, the District denies any allegation of taking. Plaintiff has not pleaded facts that would support allegations that the District unlawfully amended its Rules.

27. Plaintiff is not an adequate representative for the purported class due to the inherently individual nature of the permit process and because there is no indication of who the other class members are without permits. As stated elsewhere in the Complaint (particularly in paragraph 18), Plaintiff envisions itself as in competition with its neighbors both to capture groundwater and to market groundwater that it captures. It is therefore not an adequate representative of other landowners with whose rights and interests Plaintiff's may conflict.

28. Contrary to Plaintiff's assertions in paragraphs 28–31, this case is not suited for a class action for the reasons outlined above.

29. Defendant denies the allegations set forth in paragraph 29 of the Complaint.

30. Defendant denies the allegations set forth in paragraph 30 of the Complaint.

31. Defendant denies all other allegations in paragraph 31 of the Complaint.

## CLAIMS AND CAUSES OF ACTION

### **A. Count 1—Takings Claim, United States Constitution, 42 U.S.C. § 1983, and Texas Constitution**

32. Defendant incorporates its admissions and denials to the foregoing factual statements referenced in paragraph 32 of the Complaint as though fully set forth herein.

33. Defendant denies any allegation, express or implied, including characterizations of applicable law, in paragraph 33 of the Complaint.

34. Defendant denies any allegation, express or implied, including characterizations of applicable law, in paragraph 34 of the Complaint.

35. Defendant denies any allegation, express or implied, including characterizations of applicable law, in paragraph 35 of the Complaint.

36. Defendant denies any allegation, express or implied, in paragraph 36 of the Complaint.

37. Defendant denies any allegation, express or implied, in paragraph 37 of the Complaint.

38. Defendant denies any allegation, express or implied, in paragraph 38 of the Complaint. Further, Plaintiff is not entitled to the relief sought.

### **B. Count 2—Declaratory Relief**

39. Defendant incorporates its admissions and denials to the foregoing factual statements referenced in paragraph 39 of the Complaint as though fully set forth herein.

40. Defendant admits the legal concept of a declaratory judgment, but otherwise denies any allegation, express or implied, in paragraph 40 of the Complaint.

41. Defendant denies any allegation, express or implied, in paragraph 41 of the Complaint.

42. Defendant denies any allegation, express or implied, in paragraph 42 of the Complaint.

43. Defendant denies any allegation, express or implied, in paragraph 43 of the Complaint. Further, Plaintiff is not entitled to the relief sought.

**C. Count 3—Application for Preliminary and Permanent Injunction**

44. Defendant incorporates its admissions and denials to the foregoing factual statements referenced in paragraph 44 of the Complaint as though fully set forth herein.

45. Defendant denies any allegation, express or implied, in paragraph 45 of the Complaint.

46. Defendant denies any allegation, express or implied, in paragraph 46 of the Complaint.

47. Defendant denies any allegation, express or implied, in paragraph 47 of the Complaint.

48. Defendant denies any allegation, express or implied, in paragraph 48 of the Complaint. Further, Plaintiff's representation that there is no legal recourse is directly at odds with the rest of Plaintiff's pleading. Plaintiff has alleged a takings claim as part of this suit. The legal recourse for such a claim, if it is meritorious, is

payment in the form of money damages for the property that was purportedly taken. Thus, the extraordinary relief of injunction is improper here as there is a remedy should Plaintiff prevail on the takings claim.

49. Defendant denies any allegation, express or implied, in paragraph 49 of the Complaint. Further, Plaintiff's representation that there is no adequate remedy at law is directly at odds with the rest of Plaintiff's pleading. Plaintiff has alleged that its property has been condemned through diminution of value. The remedy for such a claim, if it is meritorious, is payment for the value of the property taken. Thus, the extraordinary relief of injunction is improper here as there is a remedy should Plaintiff prevail on the takings claim.

50. Defendant denies any allegation, express or implied, in paragraph 50 of the Complaint. Plaintiff is not entitled to the relief sought.

#### **PRESERVATION OF EVIDENCE/SPOLIATION NOTICE**

51. Defendant has and will take steps to preserve evidence and information relevant to this suit. Defendant observes that as a governmental entity, it is subject to, and complies with, the records-retention requirements of the Texas Public Information Act and the Texas Local Government Records Act.

#### **RELIEF REQUESTED**

52. Defendant incorporates its admissions and denials to the foregoing factual statements referenced in paragraph 52 of the Complaint as though fully set forth herein.

53. Defendant denies any allegation, express or implied, in paragraph 53 of the Complaint. Plaintiff is not entitled to the relief sought.

54. Defendant denies any allegation, express or implied, in paragraph 54 of the Complaint. Plaintiff is not entitled to the relief sought.

55. Defendant denies any allegation, express or implied, in paragraph 55 of the Complaint. Plaintiff is not entitled to the relief sought.

56. Defendant denies, based on the facts as alleged, that Plaintiff is entitled to recovery of attorneys' fees under Section 1988 as stated in paragraph 55 of the Complaint. Attorneys' fees may be recoverable for a party that prevails on a Section 1983 claim, but Plaintiff cannot prevail on its Section 1983 claim as pleaded.

57. All further relief sought by Plaintiff should be denied.

#### **JURY DEMAND**

58. Defendant acknowledges that Plaintiff made a demand for jury trial in the Complaint.

#### **AFFIRMATIVE AND OTHER DEFENSES**

59. Without waiving the foregoing admissions and denials, and pleading further, Defendant observes that Plaintiff has failed to apply for a permit for a new well. Accordingly, Defendant asserts that Plaintiff's claim is not ripe as Plaintiff has failed to exhaust administrative remedies and failed to satisfy conditions precedent to the claims alleged.

60. Without waiving the foregoing admissions and denials, and pleading further, Defendant asserts that as to Plaintiff's claims for injunctive relief, Defendant pleads that Plaintiff has an adequate remedy at law.

**PRAYER**

Defendant respectfully prays the Court to dismiss Plaintiff's claims with prejudice, and on final judgment, to award it costs of Court and such other and further relief as it may show itself justly to be entitled.

Respectfully submitted,

**LLOYD GOSSELINK**  
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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of March, 2025, I caused a true and correct copy of the foregoing to be transmitted by the Court's electronic filing system to the parties listed below:

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*/s/ James F. Parker*  
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