

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

FAZZINO INVESTMENTS, LP §
for itself and all others similarly situated, §

PLAINTIFFS §

V. §

CASE NO. 6:25-cv -00001-ADA-DTG §

BRAZOS VALLEY GROUNDWATER §
CONSERVATION DISTRICT, §

DEFENDANT §

PLAINTIFF’S [OPPOSED] MOTION FOR CLASS CERTIFICATION

Marvin W. Jones
Texas Bar No: 10929100
C. Brantley Jones
Texas Bar No: 24079808
SPROUSE SHRADER SMITH PLLC
701 S. Taylor, Suite 500
Amarillo, Texas 79105-5008
Telephone: (806) 468-3300
Facsimile: (806) 373-3454
Email: marty.jones@sprouselaw.com
Email: brantley.jones@sprouselaw.com

Richard L. Coffman
Texas Bar No: 04497460
THE COFFMAN LAW FIRM
3355 West Alabama, Suite 240
Houston, Texas 77098-1864
Telephone: (713) 528-6700
Facsimile: (866) 835-8250
Email: rcoffman@coffmanlawfirm.com

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to FED. R. CIV. P. 23 and Local Rule CV-23, Plaintiff Fazzino Investments, LP (“Plaintiff”), for itself and all others similarly situated, files this Motion for Class Certification, and respectfully shows the following:

**STATEMENT OF THE CASE
(LOCAL RULE CV-23 APPENDIX (A)(1))**

This is a takings class action involving groundwater property rights.

In Texas, the law governing groundwater production is the same as the law governing oil production. All producers in the same field—here, the Simsboro Aquifer—must be treated fairly and equally. But that’s not the case in the Brazos Valley Groundwater Conservation District (“BVGCD” or the “District”). BVGCD’s Rules ostensibly govern groundwater production in Brazos and Robertson Counties, Texas. BVGCD, however, does not administer the Rules fairly and the same across all landowners in the District, which BVGCD is obligated to do.

To the point, on September 14, 2023, BVGCD amended its Rules to substantially (and prospectively) increase the groundwater well spacing requirements. The Rules amendments created two tiers of landowners, precluding Plaintiff and the putative class members from fairly developing, leasing, and/or selling their groundwater property rights in the same manner as all other landowners in the District that own property over the Simsboro Aquifer and hold well permits issued before the Rules were changed. Plaintiff and the putative class members are treated differently than other landowners in the District in violation of Federal and Texas law.

Plaintiff brings this action as a class action under FED. R. CIV. P. 23 for itself and all similarly situated landowners in the District that own land over the Simsboro Aquifer (the “putative class members”) against BVGCD for amending its Rules and unconstitutionally infringing on, and taking, their groundwater property rights under color of law, without

compensation, in violation of 42 U.S.C. § 1983 and the United States and Texas Constitutions.

PROPOSED CLASS DEFINITION
(LOCAL RULE CV-23 APPENDIX (A)(2))

Plaintiff seeks to certify the following class under FED. R. CIV. P. 23(b)(2):

All individuals and entities that own land in Brazos and Robertson Counties, Texas, over the Simsboro Aquifer of at least 35 contiguous acres that do not have a pre-September 14, 2023, groundwater well permitted or drilled on their acreage.

Excluded from the proposed class are (i) BVGCD and its current and former officers, directors, employees, agents, and representatives, and (ii) the Court and its personnel.

PLAINTIFF'S TAKING CLAIM
(LOCAL RULE CV-23 APPENDIX (A)(3))

I. Factual background.¹

Plaintiff is a Texas limited partnership that owns a 69-acre tract of land in Robertson County, Texas, over the Simsboro Aquifer that does not have a pre-September 14, 2023, groundwater well permitted or drilled on the acreage. July 16, 2025, Rule 30(b)(6) Deposition of Alan Day (“Day Depo.”) (Exhibit F) at 149:9-18; Declaration of Charles Fazzino (“Fazzino Decl.”) (Exhibit A), ¶ 2. Plaintiff desires to sell its groundwater production rights to a commercial groundwater production company. *Id.* But because of the amendment of BVGCD’s Rules on September 14, 2023,² drilling a commercial water well on Plaintiff’s property is not economically feasible. *Id.*

The production of groundwater in the District is specifically governed by well spacing requirements (Rule 6.1) and production limits (Rule 7.1).

¹ The Factual Background is taken from Paragraphs 9-21 of Plaintiff’s Original Class Action Complaint (ECF No. 1) (“Complaint”).

² BVGCD’s Rules, Revised and Adopted on September 14, 2023, may be found at [File Browser | Brazos Valley Groundwater Conservation District](#) (last visited on Aug. 15, 2025).

Well spacing requirements are instituted “[t]o minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to prevent waste.” Rule 6.1(a). The District enforces the well spacing requirements under the current Rule 6.1 (“New Rule 6.1”) on all new wells for which the registration or permit was approved after September 14, 2023. Wells permitted or registered on or before September 14, 2023, are regulated by the spacing requirements of the prior version of Rule 6.1 (“Old Rule 6.1”).

Under Old Rule 6.1(b)(2), all new wells drilled in the District were required to be surrounded by only one (1) foot of land per one gallon per minute (“GPM”) of average annual production rate or capacity. Under New Rule 6.1(b)(2), which became effective on September 14, 2023, all new wells drilled in the District must be surrounded by two (2) feet of land per one GPM of average annual production rate or capacity.

BVGCD Rule 7.1 institutes production limits for new water wells “[t]o minimize as far as practicable the drawdown of the water table and the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, and to address the potential loss of opportunity to drill a new well because of spacing requirements, and to prevent waste.” A new well’s groundwater production:

[I]s limited by the number of contiguous acres that are legally assigned to the well site. The contiguous acreage assigned to the well bears a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science and the required production based acreage. The assigned contiguous acreage will be a circle based on the amount of groundwater production determined by the following formula:

$$\left(\frac{\text{Average Annual Production Rate in Gallons/Minute} \times \text{District Spacing Requirement Between Wells}}{43,560} \right)^2 \times \pi = \text{Total number of contiguous acres required to be assigned to the well site}$$

Rule 7.1(c). The “District Spacing Requirement Between Wells” variable in the above formula is the plug-in number from Rule 6.1(b)(2)—one (1) foot of land under Old Rule 6.1(b) and two (2) feet of land under New Rule 6.1(b)(2).

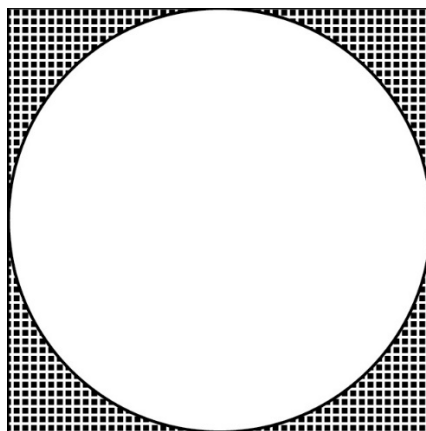
BVCGD’s wrongful amendment of Rule 6.1(b) on September 14, 2023—changing the spacing requirement from one (1) foot of land to two (2) feet of land per one GPM of average annual production rate or capacity—constitutes an unconstitutional taking of Plaintiff’s and putative class members’ groundwater property rights without compensation. By way of example, under the Old Rule 6.1(b) one-foot spacing requirement, for each one (1) GPM produced by a well, a landowner had to own or control a circle of land around the wellbore with a radius of one (1) foot. Thus, if a landowner had a 3,000 GPM well, under Old Rule 6.1(b), the landowner had to own or control land around the wellbore in a circle with a radius of 3,000 feet—or a circular area of 649 acres. Thus, a circular section of land (640 acres) could support a 3,000 GPM well.

On September 14, 2023, however, BVGCD unlawfully changed the Rule 6.1(b) spacing requirement. So, to drill a new 3,000 GPM well under the New Rule 6.1(b) two-foot spacing requirement, per the above formula, a landowner must own or control 2,596 acres around the wellbore. *See* Declaration of Mike Thornhill (“Thornhill Decl.”) (Exhibit B), ¶ 7. That’s four times as much land necessary to produce the same amount of water. *Id.* Under Old Rule 6.1(b), a 700 GPM well required only 35 acres surrounding the wellbore. *Id.* But under New Rule 6.1(b), 141 acres are required to drill the well. This is pertinent, for example, because the economic minimum production for drilling a well into the Simsboro Aquifer for municipal or industrial purposes is 1,100-acre feet per year, which requires a well producing around 700 GPM. *Id.*

To the point, New Rule 6.1(b) reduces the amount of groundwater Plaintiff and class members may produce from post-September 14, 2023, by 75%. Thornhill Decl., ¶¶ 7, 8. Stated

another way, BVGCD wrongfully devalued Plaintiff’s and putative class members’ groundwater rights to 25% of what they were before the District changed Rule 6.1(b). Considering that the typical water well costs well over \$1 million to drill, the practical effect of BVGCD’s rule change is to make prospective wells that were economically feasible to drill under Old Rule 6.1(b) no longer economically feasible to drill under New Rule 6.1(b). *Id.* Thus, BVGCD’s Rule 6.1 change prevents Plaintiff and putative class members from exercising their groundwater property rights—which constitutes an unconstitutional taking without compensation.

Adding insult to injury, after September 14, 2023, New Rule 7.1(c)(1) prohibits new wells from having a “contiguous acreage circle” that overlaps with any other well in the same aquifer. Thornhill Decl., ¶ 13. As a practical matter, this requirement effectively condemns groundwater rights within a landowner’s contiguous acreage that do not fall within the geometry of a circle. *Id.* Because BVGCD’s Rule 7.1 production limitation is tied to geometry—specifically, a circle of land—those portions of Plaintiff’s and putative class members’ tracts outside the circles of land surrounding proposed new groundwater well sites are effectively condemned by New Rule 7.1(c)(1) (*id.*), as shown in the diagram below:



Assuming a square or rectangular shaped property of sufficient size to support a well under BVGCD’s Rules and given that permitted production is tied to a circular shape, the corners of a

square or rectangular shaped property are effectively condemned because they are excluded from the total contiguous acreage required by BVGCD's new production-based acreage rule. *Id.* at ¶ 14. This effect is even more pronounced in properties that are not perfect squares or rectangles, which is true of most (if not all) of putative class members' land. *Id.* In fact, BVGCD is not aware of any tracts within the District that are in the shape of a circle. Day Depo. at 194:14-18.

Adding further insult to injury, pre-September 14, 2023, groundwater wells are not subject to the same spacing or acreage requirements of New Rules 6.1 and 7.1. Thornhill Decl., ¶ 11. Thus, landowners with pre-September 14, 2023 wells drilled on land next to tracts owned by Plaintiff and putative class members—where wells must be drilled under New Rules 6.1 and 7.1, but will not be drilled because they are now not economically feasible—are draining Plaintiff's and putative class members' land with no recourse—further negatively impacting their groundwater property rights. *Id.*

Under BVGCD's New Rules, landowners with pre-September 14, 2023, wells in close proximity to Plaintiff's and putative class members' properties without wells are producing groundwater at rates up to four (4) times the rates allowed to Plaintiff and putative class members. Thornhill Decl., ¶ 11. Because of the fugacious nature of groundwater, Plaintiff's and putative class members' ability to offset drainage and prevent confiscation of water by their producing neighbors has been reduced or eliminated altogether, resulting in a *per se* taking of Plaintiff's and putative class members' property. BVGCD's New Rules also deny Plaintiff and putative class members a fair chance to recover groundwater under their properties for the alleged sake of conservation, which also results in a *per se* taking of their property.

Under the New Rules, landowners in the District, such as Plaintiff, seeking to sell their groundwater rights have suffered (and continue to suffer) a 75% decrease in the value of their

water rights while their neighbors with wells drilled under the Old Rules have suffered no diminution in value. Thornhill Decl., ¶ 8. This is a particularly stark impact given that water rights in the Simbsoro Aquifer are currently highly sought after by companies seeking to supply water to municipalities and industries located in other parts of Texas where water is significantly scarcer. *Id.* As a practical matter, these companies can no longer afford to acquire groundwater rights or outright purchase property with groundwater rights from willing landowners, including Plaintiff and putative class members, who do not control the required acreage to support the well capacities required to drill economically feasible wells under the New Rules. *Id.*

BVGCD's geometric limitations on production capacity also render it nearly impossible to lease and/or purchase enough property around a wellbore to support a marketable well. Thornhill Decl., ¶ 9, 10. Whether for municipal, industrial, or agricultural use, BVGCD's New Rules preclude the development of Plaintiff's and putative class members' groundwater rights, constituting an uncompensated and unconstitutional taking of their groundwater property rights.

II. Plaintiff's taking claim.

In Texas, groundwater in place beneath the surface of the land is a constitutionally protected property right under the United States and Texas Constitutions. *Stratta v. Roe*, 961 F.3d 340, 356 (5th Cir. 2020); *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814, 823 (Tex. 2012). Moreover, Chapter 36 of the Texas Water Code, from which BVGCD derives its authority, expressly recognizes and adopts the common law rule vesting ownership of groundwater in landowners. *See* TEX. WATER CODE § 36.002 (stating, in pertinent part, that a landowner, including lessees and assigns, "owns the groundwater below the surface of the landowner's land as real property" (§ 36.002(a)), and that such ownership entitles the landowner to "drill for and produce the groundwater below the surface of real property." *Id.*, 36.002(b)). The

statutory right to “drill for and produce the groundwater” is only subject to BVGCD’s right to regulate groundwater production in very specific ways. *Id.*, § 36.002(b)(1), (d).

All groundwater rights owners are entitled to a fair opportunity to produce their fair share of the groundwater beneath their property. *Day* 369 S.W.3d at 831; *Stratta*, 961 F.3d at 357; *Elliff v. Texon Drilling Co.*, 210 S.W.2d 558 (Tex. 1949). Any denial of the right to produce a fair share of groundwater amounts to confiscation. *Marrs v. Railroad Commission*, 177 S.W.2d 941 (Tex. 1944). It is the duty of a regulatory body, such as BVGCD, to protect landowners’ property rights because each landowner is “...entitled to a fair chance to recover the [groundwater] in and under his land or the equivalent thereof and to prevent confiscation of his property.” *Railroad Commission v. Shell Oil*, 380 S.W.2d 556 (Tex. 1964).

Because groundwater is a landowner’s property, any order, regulation, or act—such as New Rules 6.1 and 7.1 (*see below*)—that takes, harms, or destroys that property right without compensation is prohibited by the Fifth Amendment³ to the United States Constitution and by Article I, Section 17 of the Texas Constitution. *Marrs*, 177 S.W.2d at 949. Here, by amending Rules 6.1 and 7.1, BVGCD has taken (and continues to take) Plaintiff’s and class members’ groundwater property rights, without compensation, in violation of the Fifth Amendment to the United States Constitution, 42 U.S.C. § 1983, and the Texas Constitution, by denying them their fair opportunity to produce the groundwater under their land and failing to prevent confiscation of their groundwater (drainage) by their adjoining landowners’ groundwater wells.

As described below, New Rule 7.1 also effects a condemnation of Plaintiff’s and putative class members’ property that is outside of the inscribed circle resulting from applying the

³ As made applicable to the states via incorporation into the Fourteenth Amendment. *Chicago, Burlington & Quincy Railroad Company v. City of Chicago* (1897).

BVGCD's acreage-based groundwater production limitations to properties that are not circular.

BVGCD's taking of Plaintiff's and putative class members' property (*i.e.*, groundwater rights) under color of state law violates the Fifth Amendment to the United States Constitution, 42 U.S.C. § 1983, and the Texas Constitution. Plaintiff and putative class members own real property located in BVGCD's District. As such, under Texas law, they own the groundwater beneath their property. BVGCD's New Rules—as outlined above—effectively condemn vast quantities of Plaintiff's and putative class members' groundwater.

Plaintiff and putative class members have suffered both a *per se* and a regulatory taking because of BVGCD's above-described Rule changes. Plaintiff, for itself and the class members, seeks injunctive and declaratory relief in the form of repealing New Rules 6.1 and 7.1 and applying Old Rules 6.1 and 7.1 uniformly across all real property located in the District.

LEGAL STANDARD

Rule 23 “creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). “The very purpose to be served by a class action is the opportunity it affords to prevent a multiplicity of suits based on a wrong common to all.” *Roper v. Conserve, Inc.*, 578 F.2d 1106, 1114 (5th Cir. 1978) (citation omitted). Class actions “achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 615 (1997).

To be certified, a proposed class must meet all the requirements of Rule 23(a): (i) the class is so numerous that joinder of all members is impracticable (the *numerosity* requirement); (ii) there is a question of law or fact common to the class (the *commonality* requirement); (iii)

the claims or defenses of the representative parties are typical of the claims or defenses of the class (the *typicality* requirement); and (iv) the representative parties will fairly and adequately protect the interests of the class (the *adequacy* requirement). *In re Rodriguez*, 695 F.3d 360, 364-65 n.3 (5th Cir. 2012). The class must also satisfy one of the Rule 23(b) requirements. *Yates v. Collier*, 868 F.3d 354, 366 (5th Cir. 2017). Here, Plaintiff seeks Rule 23(b)(2) certification.

In determining whether to certify a class, a court should not consider whether the plaintiff will prevail on the substantive merits, but rather, whether the requirements of Rule 23 have been met. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974); *Miller v. Mackey Intern., Inc.*, 452 F.2d 424, 427-28 (5th Cir. 1971). Indeed, the Fifth Circuit has further instructed that courts considering certification of a civil rights class action, such as this case, should not apply the burden of proof rules “rigidly or blindly.” *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981) (citation omitted).

**THE FOUR RULE 23(a) PREREQUISITES ARE MET
(LOCAL RULE CV-23 APPENDIX (A)(5))**

I. The proposed class is so numerous that joinder of all members is impracticable. Rule 23(a)(1).

There is no fixed number of class members required for a finding of numerosity. *Zeidman*, 651 F.2d at 1038–39 (“federal trial courts are quite willing to accept common sense assumptions in order to support a finding of numerosity”) (quoting 5 J. NEWBERG ON CLASS ACTIONS (“NEWBERG”) § 8812, at 836 (1st ed. 1977)). To satisfy the numerosity requirement, a “reasonable estimate of the number of purported class members” is sufficient. *Ibe v. Jones*, 836 F.3d 516, 528 (5th Cir. 2016). “Generally, a class of over forty members meets the numerosity requirement[.]” *Burns v. Chesapeake Energy, Inc.*, No. 5:15-cv-01016-RCL, 2018 WL 4691616, at *4 (W.D. Tex. Sept. 28, 2018); *see also* NEWBERG § 3.05, at 3-25 (3d ed. 1992). Courts also

consider the “financial resources of class members, and the ability of claimants to institute individual suits,” as well as the “judicial economy arising from the avoidance of a multiplicity of actions.” NEWBERG § 3.12 (5th ed. 2017).

The proposed class easily satisfies the numerosity requirement. BVGCD General Manager Alan Day testified that based on his knowledge of the District and the District map, “it seem[s] logical” that the proposed class contains more than one hundred (100) properties. Day Depo. at 251:24-256:20;⁴ Thornhill Decl., ¶ 16 (opining that the proposed class contains over 2100 properties). Individual joinder of all putative class members, therefore, is impracticable.

II. There are questions of law or fact common to the proposed class. Rule 23(a)(2).

“[A] common question is one where the same evidence will suffice for each class member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (internal quotation omitted). At bottom, “[c]ommonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury.’” *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 349–50 (2011) (citation omitted). “To satisfy the commonality requirement under Rule 23(a)(2), class members must raise at least one contention that is central to the validity of each class member’s claims.” *In re Deepwater Horizon*, 739 F.3d 790, 810 (5th Cir. 2014). Even a single common question of law or fact is sufficient, so long as the resolution of the common question “will *resolve* an issue that is *central to the validity* of each one of the class member’s claims in one stroke.” *Cole v. Livingston*,

⁴ In this passage from his deposition, Mr. Day also admitted that he unilaterally chose not to perform the analysis required to properly respond to Plaintiff’s Request for Admission No. 17 even though the answer is “absolutely ascertainable” (*id.* at 255:14-18). Rather, BVGCD simply denied the request. As a result, Plaintiff served follow-up discovery requests on BVGCD seeking the number, identities of the properties, and contact information of the putative class members. M.W. Jones Decl., ¶ 11. Plaintiff awaits BVGCD’s response.

4:14-CV-1698, 2016 WL 3258345, at *3 (S.D. Tex. June 14, 2016), *aff'd sub nom.*, *Yates v. Collier*, 868 F.3d 354 (5th Cir. 2017). A “pattern or practice that is generally applicable to the class as a whole” satisfies that requirement. *M.D. v. Perry*, 294 F.R.D. 7, 28 (S.D. Tex. 2013).

Here, the commonality requirement is also easily established. Plaintiff’s claims are based on a “single course of conduct” by BVGCD that injured Plaintiff and all putative class members in precisely the same manner: BVGCD’s September 14, 2023 Rules amendments take and/or devalue their groundwater property rights, thereby precluding Plaintiff and the putative class members from developing, leasing, and/or selling such rights and not treating them fairly and the same as all other landowners in the District with property over the Simsboro Aquifer are treated—which, under Texas law (*e.g.*, TEX. WATER CODE § 36.101(a)(2)), BVGCD is obligated to do. Even Mr. Day agrees. Day Depo. at 86:23-87:18. Overlaying the common injury are numerous resulting questions common to the proposed class, including, *inter alia*: (i) whether BVGCD’s wrongful actions violated (and continue to violate) the Fifth Amendment to the United States Constitution; (ii) whether BVGCD’s wrongful actions violated (and continue to violate) 42 U.S.C. § 1983; (iii) whether BVGCD’s wrongful actions constitute a taking and directly and/or proximately caused (and continue to cause) Plaintiff and the putative class members to suffer injury and harm to their groundwater property rights; (iv) whether Plaintiff and the putative class members are entitled to declaratory relief; and (v) whether Plaintiff and the putative class members are entitled to injunctive relief. *See* Complaint, ¶25.

Any one of these common issues, standing alone, is enough to satisfy Rule 23(a)(2)’s permissive standard. *Yates*, 868 F.3d at 365 n.6 (“we reaffirm that Rule 23(a)(2) requires only that a plaintiff demonstrate at least one common question of law or fact” (citing *Wal-Mart Stores*, 564 U.S. at 359)); *Simms v. Jones*, 296 F.R.D. 485, 497 (N.D. Tex. 2013) (same).

III. Plaintiff's claims are typical of the putative class members' claims. Rule 23(a)(3).

Typicality, along with commonality, serves as a “guidepost[] for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Wal-Mart Stores*, 564 U.S. at 349 n.5. Both requirements “also tend to merge with the adequacy-of-representation requirement, although the latter requirement also raises concerns about the competency of class counsel and conflicts of interest.” *Id.*

“[T]he test for typicality is not demanding,” *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 625 (5th Cir. 1999), and “does not require a complete identity of claims.” *James v. City of Dallas, Tex.*, 254 F.3d 551, 571 (5th Cir. 2001), *abrogated on other grounds, In re Rodriguez*, 695 F.3d 360 (5th Cir. 2012). Rather, the class representative's claim must have the same *essential characteristics* as that of the putative class. *Morrow v. Washington*, 277 F.R.D. 172, 194 (E.D. Tex. 2011). Claims arising from a similar course of conduct and sharing the same legal theories are typical claims even if there is factual difference between the representative and others in the class. *James*, 254 F.3d at 571.

Typicality is satisfied here for largely the same reasons that commonality is satisfied. *See Wal-Mart Stores*, 564 U.S. at 349 n.5 (“The commonality and typicality requirements of Rule 23(a) tend to merge” (quoting *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982))). Plaintiff and each putative class member face the same injury (a taking and/or devaluation of their groundwater property rights) based on the same government policy (BVGCD's September 14, 2023 Rules amendments), which is unlawful as to the entire proposed class. Moreover, as with commonality, any factual differences that might exist here between Plaintiff and the putative

class members are not enough to defeat typicality. The typicality requirement is met here.

IV. Plaintiff and its counsel will fairly and adequately protect the interests of the class. Rule 23(a)(4).

The adequacy of representation inquiry has two components: (i) whether the named plaintiff's interests are not antagonistic to, or in conflict with those they seek to represent, and (ii) whether plaintiff's attorneys are qualified, experienced, and generally able to conduct the litigation. *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 481 (5th Cir. 2001). Plaintiff and its counsel easily meet this requirement.

A. Plaintiff has no interests that are antagonistic to, or in conflict with, those it seeks to represent.

To satisfy the adequacy requirement, "[c]lass representatives must be 'part of the class and possess the same interest and suffer the same injury as the class members.'" *Amchem*, 521 U.S. at 625-26; *see also Haggart v. U.S.*, 89 Fed. Cl. 523, 535 (2009) (finding adequacy question satisfied where "the interests of the named plaintiffs and the proposed class members are aligned because all plaintiffs would assert the same legal claim").

Class representatives also must "possess a sufficient level of knowledge and understanding to be capable of 'controlling' or 'prosecuting' the action" and have a willingness to vigorously prosecute the interests of the class through qualified counsel. *Berger*, 257 F.3d at 482-83. To satisfy this burden, they "need not be legal scholars." *Feder v. EDS*, 429 F.3d 125, 132 n.4 (5th Cir. 2005). The named plaintiffs are also not required to be litigation managers, but "are entitled to work with, and rely upon, their counsel in pursuing their claims and navigating the complicated legal and factual issues associated with" complex litigation. *Stoffels v. SBC Commc 'ns, Inc.*, 238 F.R.D. 446, 455 (W.D. Tex. 2006).

Here, Plaintiff has no interests that are antagonistic to, or in conflict with, the putative class members. Plaintiff possesses the same interests and has suffered the same injury as the putative class members and seeks to secure class-wide relief on behalf of itself and the entire proposed class. Fazzino Decl., ¶ 4. Nor does Plaintiff have any incentive or desire to deviate from the sought after class-wide relief. *Id.* Plaintiff, who has been actively involved in the litigation from the outset, has no conflicts with the putative class members, and will fairly and adequately protect the interests of the proposed class. *Id.*

B. Plaintiff’s counsel are qualified, experienced, and committed to conduct the litigation on behalf of the proposed class.

Determining the appointment of lead class counsel, the court must consider counsel’s (i) work in identifying and investigating potential claims; (ii) experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class. FED. R. CIV. P. 23(g)(1)(A)). The court may also consider “any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” FED. R. CIV. P. 23(g)(1)(B). No single factor is determinative; instead, a court should appoint counsel after evaluating all relevant considerations and comparing the relative strengths of counsel. *See* 7B CHARLES ALAN WRIGHT ET AL., FED. PRAC. & PROC. § 1802.3 (3d ed. 2005). As set forth below, Plaintiff’s counsel meet all these requirements and should be appointed class counsel.

1. Proposed class counsel have performed substantial work to date identifying, investigating, and litigating Plaintiff’s claims and will commit the financial and manpower resources to go the distance. FED. R. CIV. P. 23(g)(1)(A)(i); (iv).

To date, Plaintiff’s counsel have collectively spent 870 hours (i) identifying and investigating the facts, legal claims, and remedies for Plaintiff and the putative class members,

including interviewing landowners injured by the BVGCD Rule changes and commercial water companies about the impact of the Rule changes on drilling new water wells in the District, (ii) drafting and filing Plaintiff's Complaint, (iii) drafting the Joint Rule 26 Report, (iv) participating in the Rule 26(f) conference with defense counsel, (v) drafting a proposed scheduling order, (vi) drafting and serving Plaintiff's Initial Disclosures, (viii) reviewing BVGCD's document production and written discovery responses, (ix) responding to discovery served on Plaintiff by BVGCD, (x) preparing for and deposing BVGCD, (xi) drafting and filing this class certification motion and exhibits, and (xii) regularly conferring with co-counsel regarding case strategy and case management. *See* Declaration of Richard L. Coffman ("Coffman Decl.") (Exhibit C), ¶ 10.

To date, Plaintiff's counsel also have collectively funded over \$15,800 of litigation expenses and are committed to pay whatever is necessary to see this litigation through to its conclusion, including trial. *Id.*, ¶ 12.

Plaintiff's counsel also have the manpower resources to go the distance and will devote them to the successful prosecution of this case. Coffman Decl., ¶ 12; Declaration of Marvin W. Jones ("M. W. Jones Decl.") (Exhibit D), ¶ 7. For example, Sprouse Shrader Smith PLLC, of which Marvin W. Jones and C. Brantley Jones are partners, has over forty (40) lawyers and thirty (30) support staff in five offices across Texas. M. W. Jones Decl., ¶ 7; www.sprouselaw.com. To date, Plaintiff's counsel have operated as a cohesive, efficient, and well-organized attorney team and will continue to do so going forward. Coffman Decl., ¶12; M. W. Jones Decl., ¶ 7.

2. Proposed class counsel collectively possess the requisite experience, skill, and knowledge of the applicable law to prosecute this class action. FED. R. CIV. P. 23(g)(1)(A)(ii); (iii).

As set forth in the attached Declarations (Coffman, M.W. Jones, and C. Brantley Jones) (Exhibits C-E), Plaintiff's counsel collectively possess the requisite skill, legal knowledge, and

experience prosecuting takings and groundwater rights cases and leading, or assisting in a significant manner with, class actions, mass tort actions, and other complex litigation on behalf of landowners and others to lead this class action. They should be appointed class counsel.

V. The proposed class is “absolutely” ascertainable.

District courts in the Fifth Circuit also consider ascertainability an “implied requirement to Rule 23,” “require[ing] that the proposed class be adequately defined and clearly ascertainable.” *See, e.g., Ictech- Bendeck v. Waste Connections Bayou, Inc.*, No. CV 18-7889, 2025 WL 932772, at *7 (E.D. La. Mar. 27, 2025) (citing *Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm’n*, 70 F.4th 914, 933 (5th Cir. 2023)). “[T]he touchstone of ascertainability is whether the class is sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.” *Id.* (citation omitted). “[T]he court need not know the identity of each class member before certification; ascertainability requires only that the court be able to identify class members at some stage of the proceeding.” *See Frey v. First Nat’l Bank Sw.*, 602 F. App’x 164, 168 (5th Cir. 2015).

Here, the properties in the proposed class are “absolutely ascertainable” utilizing information from the District map and the appraisal districts. *See Day Depo.* at 251:24-256:20; Thornhill Decl., ¶ 16.

If certified, the proposed class also would be easily manageable—especially since Plaintiff does not seek damages. Coffman Decl., ¶ 11; *see also Califano v. Yamasaki*, 442 U.S. 682, 690 (1979). Plaintiff’s counsel and support staff are capable and experienced at managing large groups of clients and cases with more clients than the number of putative class members here. *See, e.g., Coffman Decl.*, ¶ 8.

**THE CLASS SHOULD BE CERTIFIED UNDER RULE 23(b)(2)
(LOCAL RULE CV-23 APPENDIX (A)(4))**

Certification is appropriate under Rule 23(b)(2), when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”

Rule 23(b)(2) “was intended primarily to facilitate civil rights class actions, where the class representatives typically sought broad injunctive or declaratory relief against discriminatory practices.” *Penson v. Terminal Transp. Co.*, 634 F.2d 989, 993 (5th Cir. 1981) (citing Advisory Committee Notes, 39 F.R.D. 98, 102 (1966)). “The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.” *Wal-Mart*, 564 U.S. at 360 (“Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.”).⁵

Rule 23(b)(2) is satisfied here because BVGCD acted on grounds that apply to the proposed class by subjecting all putative class members to its September 14, 2023, Rule changes and taking and/or devaluing their groundwater rights in precisely the same manner. *See, e.g., Yates*, 868 F.3d at 366 (“It is well-established that instead of requiring common issues, Rule 23(b)(2) requires common behavior by the defendant toward the class.”) (citation omitted).

Plaintiff seeks uniform relief that would solve the problem and benefit itself and all class members in precisely the same manner; to wit, injunctive and declaratory relief in the form of

⁵ Alternatively, the proposed class may be certified under Rule 23(b)(1)(A) because proceeding without class certification would create a “risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.” The Rule 23(b)(1)(A) type of class action encompasses cases like this one in which BVGCD is obligated to treat all landowner class members over the Simsboro Aquifer alike.

repealing New Rules 6.1 and 7.1 and applying Old Rules 6.1 and 7.1 uniformly across all real property located in the District. The relief Plaintiff seeks “is precisely the type of remedial action for which Rule 23(b)(2) was designed.” *Murillo v. Musegades*, 809 F. Supp. 487, 503 (W.D. Tex. 1992) (citing *Penson*, 634 F.2d 993); *see also* NEWBERG § 1.3 (“Rule 23(b)(2) is typically employed in civil rights cases and other actions not primarily seeking money damages. The (b)(2) class action is often referred to as a ‘civil rights’ or ‘injunctive’ class suit.”). The putative class members’ interests are more than sufficiently related to warrant aggregate litigation. It is far more efficient to grant the requested relief protecting all the class members than to force landowners to pursue piecemeal litigation. The class should be certified under Rule 23(b)(2).

OTHER PENDING ACTIONS
(LOCAL RULE CV-23 APPENDIX (A)(6))

Plaintiff knows of no other pending actions in any court against BVGCD alleging the same or similar causes of action.

PLAINTIFF KNOWINGLY BRINGS THIS ACTION AS A CLASS ACTION
(LOCAL RULE CV-23 APPENDIX (A)(7))

Prior to filing this action, Plaintiff’s counsel thoroughly explained to Plaintiff the nature of a class action and its potential advantages and disadvantages. Fazzino Decl., ¶ 3; M.W. Jones Dec, ¶ 9. Having been fully informed, Plaintiff brought, and desires to prosecute, this action as a class action. Fazzino Decl., ¶ 6.

NOTICE TO CLASS MEMBERS
(LOCAL RULE CV-23 APPENDIX (A)(8))

Plaintiff is responsible for sending class notice. That said, Rule 23 does not require notice or an opportunity to opt out of a Rule 23(b)(2) certified class—although “for any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.” Rule 23(c)(2). Should the Court certify the proposed class, appoint Plaintiff’s counsel as class counsel, and

direct such notice, Plaintiff's counsel, as class counsel, and on behalf of Plaintiff, will pay for class notice. Plaintiff's counsel also will also create and manage a case website to disseminate information about the case should the Court so order.

SETTLEMENT NEGOTIATIONS
(LOCAL RULE CV-23 APPENDIX (A)(9))

Early on, Plaintiff's counsel presented BVGCD's counsel with a class-wide settlement proposal with zero out-of-pocket cost to BVGCD. M.W. Jones Decl., ¶ 10. Plaintiff's counsel subsequently reiterated the proposal on at least one occasion. *Id.* Each time, BVGCD's counsel rejected the proposal out of hand and declined to make a settlement counterproposal. *Id.*

OTHER MATTERS
(LOCAL RULE CV-23 APPENDIX (A)(10))

Plaintiff knows of no other matters impacting the expedition of a decision on this Motion for Class Certification and the speedy resolution of the case on the merits.

CONCLUSION

A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiff's and putative class members' claims. Litigating this case as a class action is appropriate because (i) a class action will avoid a multiplicity of suits and the corresponding burden on the courts and parties, and (ii) it would be virtually impossible for all putative class members to intervene in this action as individual parties-plaintiff. Absent a class action, the injury and harm to Plaintiff's and putative class members' groundwater property rights will continue.

Accordingly, Plaintiff respectfully requests the Court to (i) certify this action as a class action under FED. R. CIV. P. 23(b)(2), and (ii) appoint Marvin W. Jones and C. Brantley Jones of Sprouse Shrader Smith PLLC, and Richard L. Coffman of The Coffman Law Firm, as Co-Lead Class Counsel.

Date: August 22, 2025.

Respectfully submitted,

/s/ Richard L. Coffman

Richard L. Coffman

Texas Bar No: 04497460

THE COFFMAN LAW FIRM

3355 West Alabama, Suite 240

Houston, Texas 77098-1864

Telephone: (713) 528-6700

Facsimile: (866) 835-8250

Email: rcoffman@coffmanlawfirm.com

Marvin W. Jones

Texas Bar No: 10929100

C. Brantley Jones

Texas Bar No: 24079808

SPROUSE SHRADER SMITH PLLC

701 S. Taylor, Suite 500

Amarillo, Texas 79105-5008

Telephone: (806) 468-3300

Facsimile: (806) 373-3454

Email: marty.jones@sprouselaw.com

Email: brantley.jones@sprouselaw.com

Attorneys for Plaintiff and the Putative Class

CERTIFICATE OF CONFERENCE

On August 20, 2025, Defendant's counsel confirmed, via a telephone call with Marvin W. Jones, counsel for Plaintiff, that Defendant opposes this motion.

/s/ Richard L. Coffman

Richard L. Coffman

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2025, I served a true and correct copy of Plaintiff's Motion for Class certification on Defendant's counsel via email and the Court's electronic filing system.

/s/ Richard L. Coffman

Richard L. Coffman

EXHIBIT A

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

FAZZINO INVESTMENTS, LP	§	
for itself and all others similarly situated,	§	
	§	
PLAINTIFFS	§	
	§	
V.	§	CASE NO. 6:25-CV-0001-ADA-DTG
	§	
BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT,	§	
	§	
DEFENDANT	§	

**DECLARATION OF CHARLES FAZZINO IN SUPPORT OF PLAINTIFF’S MOTION
FOR CLASS CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I, Charles Fazzino, declare as follows:

1. My name is Charles Fazzino. I am over the age of 21, am competent to make this declaration and have personal knowledge of the statements contained herein, all of which are true and correct. I am the managing member of Fazzino Investments, LP and am fully authorized to make this declaration. I submit this declaration in support of Plaintiff’s Motion for Class Certification.

2. Fazzino Investments, LP is a Texas limited partnership that owns a 69-acre tract of land in Robertson County, Texas, over the Simsboro Aquifer that does not have a pre-September 14, 2023, groundwater well permitted or drilled on the acreage. Fazzino Investments, LP desires to sell its groundwater production rights in the Simsboro Aquifer to a commercial groundwater production company. But because of Brazos Valley Groundwater Conservation District’s September 14, 2023, Rules amendments, drilling a commercial water well on the 69-acre tract is not economically feasible and no commercial groundwater production company is interested in doing so. I filed this class action, on behalf of Fazzino Investments, LP and similarly impacted

landowners, to force the Brazos Valley Groundwater Conservation District to revert to using the pre-September 14, 2023, Rules.

3. Before this case was filed, I had extensive discussions with Marvin W. (“Marty”) Jones regarding the claims being asserted and the potential advantages and disadvantages of bringing them as a class action, rather than as an individual case. I was familiar with Mr. Jones because he and Brantley Jones represented my cousin, Anthony Fazzino, in a lawsuit against Brazos Valley Groundwater Conservation District. In our conversations before the suit was filed, Mr. Jones explained that a class action would resolve my individual issues with Brazos Valley Groundwater Conservation District while also benefitting other similarly situated landowners whose rights were impacted by BVGCD’s September 14, 2023, Rule changes. Mr. Jones explained that Fazzino Investments, LP would be the class representative, which would involve having to respond to discovery, give a deposition, and testify at hearings or at trial. He explained that Fazzino Investments, LP would not be able to “control” the litigation as it would if it was the only plaintiff because as the class representative, Fazzino Investments, LP would be bringing the case on behalf of itself and other similarly situated landowners and would be required to take other landowner class member’ rights and interests into consideration. He further explained that we would only be seeking injunctive relief, but not monetary damages.

4. To the best of my knowledge and understanding of the case, Fazzino Investments, LP has no interests that are antagonistic to, or in conflict with, the other landowner class members. Fazzino Investments, LP possesses the same interests, has suffered the same injury as the other landowner class members, and seeks to secure class-wide relief on behalf of itself and the other landowner class members in the form of injunctive relief requiring the Brazos Valley Groundwater Conservation District to revert to using the pre-September 14, 2023, Rules. Fazzino Investments,

LP also does not have any incentive or desire to deviate from seeking this class-wide injunction. I know of no conflicts that Fazzino Investments, LP has with any other landowner class members. Fazzino Investments, LP stands ready to protect its interests and the interests of the other impacted landowner class members.

5. I, on behalf of Fazzino Investments, LP, have been actively involved in the litigation from the beginning. To date, I have assisted counsel with answering the interrogatories, requests for production, and requests for admission served on Fazzino Investments, LP by Brazos Valley Groundwater Conservation District. I also have regularly conferred with Fazzino Investments, LP's lawyer, Marvin W. ("Marty") Jones, regarding case developments, case status, and case strategy. I am available to give my deposition on reasonable notice and will testify at any hearings or at trial as the class representative where my testimony is required.

6. Considering the above, I, on behalf of Fazzino Investments, LP, brought and desire to prosecute this lawsuit as a class action.

I declare under penalty of perjury that this declaration is true and correct to the best of my knowledge.

Executed on August 19, 2025, in Hearne, Texas.

/s/ Charles Fazzino
Charles Fazzino, Managing Member
Fazzino Investments, LP

EXHIBIT B

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

**FAZZINO INVESTMENTS, LP
for itself and all others similarly situated,**

PLAINTIFFS

V.

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT,**

DEFENDANT

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CASE NO. 6:25-CV-0001-ADA-DTG

**DECLARATION OF MICHAEL R. THORNHILL IN SUPPORT OF PLAINTIFF’S
MOTION FOR CLASS CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I, Michael R. Thornhill, declare as follows:

1. My name is Michael R. Thornhill. I am over the age of 21, am competent to make this affidavit and have personal knowledge of the statements contained herein and that they are both true and correct. The opinions expressed herein are based on my education, knowledge, and experience. My opinions herein are expressed to a reasonable degree of scientific certainty and probability. I submit this declaration in support of Plaintiff’s Motion for Class Certification.

2. I am a licensed professional geoscientist (geology) in the State of Texas. Since March of 2025 I have been the CEO of Legacy Groundwater, LLC, into which my previous company and entire staff were integrated. Prior to the formation of Legacy Groundwater, I was the President of Thornhill Group, Inc. (TGI), a professional hydrogeology and water resources specialty firm that I established and headed for 27 years. Through TGI and Legacy Groundwater, I continue to specialize in conducting studies and investigations involving groundwater resource assessment and rights evaluations. I have been a practicing hydrogeologist in the water resource consulting business in Texas for more than 36 years.

3. I have a Bachelor of Science degree in geology and a Master of Science degree in geology from Oklahoma State University. My graduate degree work was focused on specializing in hydrogeology. I am registered with the Texas Board of Professional Geoscientists (TBPG) and certified by the American Institute of Professional Geologists (AIPG).

4. Through my consulting practice, I have represented numerous private, commercial, and governmental entities, providing various planning, design, analysis, and valuation services for a wide range of groundwater projects. I have conducted and supervised investigations for developing large groundwater supplies ranging from less than five (5) to more than 100 million gallons per day (MGD), provided groundwater resource assessments for litigation, assisted numerous project engineers in well and wellfield design, and have directed projects involving well evaluation and rehabilitation. In addition, I have conducted or directed well-siting and wellfield construction and installation projects for more than 80 public water supply wells, including wells supplying brackish water to desalination plants. My clients include municipalities, law firms, mines and quarries, municipal utility districts, engineering firms, developers, industries, bottled water companies, groundwater conservation districts, water marketers, and private landowners.

5. I have extensive experience with water-related projects and issues in the Simsboro Aquifer, with the Brazos Valley Groundwater Conservation District (“BVGCD” or the “District”), and with Groundwater Management Area 12 (GMA 12) and other groundwater conservation districts within GMA 12. These consulting assignments include the following:

- a. From 1989 through 1997 and while being employed as a consulting hydrogeologist for R.W. Harden & Associates, Inc. (RWH&A), I conducted and participated in well design, well completion, aquifer testing, monitoring, and modeling in order to permit, implement, and assess depressurization of the Simsboro Aquifer at the Aluminum

Company of America (ALCOA) Sandow Mine in Milam County. Similarly, while at RWH&A and during the 1990 to 1997 timeframe, I designed and supervised field investigations, well completion, and monitoring programs for the Walnut Creek Mining Company (WCMC) Calvert Mine in Robertson County, Texas. Additionally, I conducted groundwater flow modeling and prepared subsequent reports, including reports summarizing hydrogeologic conditions and probable hydrologic impacts related to mining operations and groundwater pumping as required for Railroad Commission of Texas (RRC) permit submittals;

- b. From 1999 until the present, TGI (and Legacy Groundwater) represented GateHouse Water, LLC. (and predecessor owners including Water Texas, Sustainable Water Resources (SWR), and the Forestar Group, Inc.) in conducting hydrogeologic studies and acquiring permits from the Lost Pines Groundwater Conservation District (LPGCD) to produce up to 45,000 acre-feet per year from the Simsboro Aquifer from 10 wells to be completed within Lee County, Texas. Later, Forestar agreed to a lesser amount of pumping (28,500 acre-feet per year) and GateHouse has recently agreed to a permit amount of 18,500 acre-feet per year. TGI assisted project engineers in designing the 10 wells and obtaining approval to construct the wells from the Texas Commission on Environmental Quality (TCEQ). TGI provided comprehensive field services including inspecting the completion to date of three (3) large-capacity wells with permitted pumping rates of up to 3,500 gallon per minute (GPM). TGI conducted aquifer (i.e., pumping) tests on the three (3) wells with testing rates ranging from 2,500 to 5,000 gpm. Additionally, TGI performed analytical and numerical modeling for

the project, and represented GateHouse in desired future conditions (DFC) matters before GMA 12;

- c. From approximately 2000 until the present, TGI and Legacy Groundwater have represented the WCMC and its mining operations located in Robertson County. TGI has conducted hydrogeologic studies, groundwater modeling, well design and well-field placement studies, and drilling and well completion inspection to assist WCMC in acquiring RRC permits to depressurize the Simsboro Aquifer to allow for maintaining safe and efficient mining operations. Subsequently, TGI (and Legacy Groundwater) has prepared all sections of RRC permit applications pertaining to the geologic setting, groundwater conditions, and probable hydrologic impacts related to the mining operations including groundwater pumping;
- d. From 2003 until 2023, TGI represented End Op, LP (now owned by Recharge Water, LP) in conducting hydrogeologic studies and permit hearings before the LPGCD and in subsequent hearings before the State Office of Administrative Hearings (SOAH) to acquire permits from the LPGCD to produce up to 46,000 acre-feet per year from the Simsboro Aquifer from wells to be completed in Bastrop and Lee counties, Texas. TGI assisted project engineers in the design and inspected the completion of an initial large-capacity pilot production well which was tested at an average pumping rate of 1,926 GPM during a 23-day aquifer test designed and conducted by TGI. Additionally, TGI performed analytical and numerical groundwater modeling, and represented End Op in DFC matters before GMA 12;
- e. TGI completed in 2005 a study and report entitled *Evaluation of Aquifers within Fayette County Groundwater Conservation District Boundaries*, prepared for the

Fayette County Groundwater Conservation District (FCGCD) which is within GMA 12 and included the Carrizo Aquifer (part of the Carrizo-Wilcox Aquifer) and several overlying aquifers;

- f. From 2006 through 2023, TGI represented Dr. Clifford Skiles in permitting matters before the BVGCD, including studies and testimony to assist in securing permits to pump more than 20,000 acre-feet per year from the Simsboro Aquifer; and
- g. Since 2021, TGI (and Legacy Groundwater) has represented UW Brazos Valley Farm, LLC in the acquisition of groundwater through both purchases and leases of groundwater rights in Robertson County, Texas. TGI assisted numerous landowners in successfully obtaining drilling and production permits to produce a combined (rounded to the nearest one thousand) 182,000 acre-feet per year of groundwater from the Simsboro Aquifer within Robertson County. TGI also assisted UW Brazos Valley Farms, LLC in obtaining a transport permit from the BVGCD for 49,999 acre-feet per year. Through this work and other previous work within BVGCD, I have become familiar with the amounts of groundwater production subject to such leases and purchases as well as the market for groundwater in areas including Austin, Round Rock, Georgetown, Taylor, Hutto, and other locations.
- h. I am familiar with the economics of drilling public water system (PWS) and large-capacity irrigation and industrial wells into the Simsboro Aquifer within Robertson and Brazos counties, and I am familiar with the amount of groundwater production needed from a well and well fields to make drilling and equipping the well(s) economically practicable.

- i. I have also become familiar with the value of groundwater rights in Robertson and Brazos counties as well as other areas within GMA 12.
 - j. Through all of my experience dealing with the Brazos Valley region over the past 35 years, I have gained extensive knowledge of the BVGCD area, particularly with regard to hydrogeologic and aquifer conditions within the District and GMA 12, aquifer productivity and well hydraulics, the amount of groundwater in aquifer storage, aquifer responses to well pumping, groundwater budgets and balances, water quality, well design, pumping conditions, costs, and economics of pumping groundwater and producing groundwater supplies. I have also become well-versed with the BVGCD Rules and Management Plan, desired future conditions (DFCs), value of groundwater, and groundwater conditions with respect to property rights and fair share for groundwater owners.
6. I am familiar with the Rules of the BVGCD, both before and after September 14, 2023, and particularly the Rules relating to spacing of wells and production limitations of wells, which can also be expressed as a property requirement associated with a well allocation. Specifically, I was familiar with BVGCD Rules 6.1 and 7.1 as they existed prior to September 14, 2023 (Old Rule 6.1 and Rule 7.1). Under Old Rule 6.1(b)(2), all new wells drilled within the District and completed into the Simsboro Aquifer were required to be surrounded by only one (1) foot of land per one gallon per minute (GPM) of average annual production rate or capacity. Under New Rule 6.1(b)(2), which became effective on September 14, 2023, all new wells drilled in the District and completed into the Simsboro Aquifer must be surrounded by two (2) feet of land per one GPM of average annual production rate or capacity. The effect of this rule change is seen in the application of BVGCD Rule 7.1 which sets production limits or the amount of acreage that must be assigned to the well allocation

(i.e., the “average annual production rate”) based on a formula that utilizes the required spacing of wells as one component of the formula. Under Rule 7.1, a new well’s groundwater production:

. . . [I]s limited by the number of contiguous acres that are legally assigned to the well site. The contiguous acreage assigned to the well bears a reasonable reflection of the cone of depression impact near the pumped well, as based on the best available science and the required production-based acreage. The assigned contiguous acreage will be a circle based on the amount of groundwater production determined by the following formula:

$$\frac{\left(\begin{array}{l} \text{Average Annual} \\ \text{Production Rate} \\ \text{in Gallons/Minute} \end{array} \times \begin{array}{l} \text{District Spacing} \\ \text{Requirement} \\ \text{Between Wells} \end{array} \right)^2 \times \pi}{43,560} = \begin{array}{l} \text{Total number of} \\ \text{contiguous acres} \\ \text{required to be assigned} \\ \text{to the well site} \end{array}$$

Per Rule 7.1(c), the “District Spacing Requirement Between Wells” variable in the above formula is the plug-in number from Rule 6.1(b)—one (1) foot of land under Old Rule 6.1(b) and two (2) feet of land under New Rule 6.1(b).

7. Using the “District Spacing Requirement Between Wells” under Old Rule 6.1, a landowner had to own or control enough land to allow for a circle of land around the wellbore with a radius of one (1) foot per GPM of average annual pumping rate. Thus, if a landowner had a 3,000 GPM well, under Old Rule 6.1(b), the landowner had to own or control at least enough land around the wellbore for a circle with a radius of 3,000 feet—or an area of 649 acres. As such, a circular section of land (640 acres) could effectively support a well that can produce an average of right at 3,000 GPM. Under New Rule 6.1, requiring two feet per gallon per minute, the result of the Rule 7.1 formula is that the landowner now must own or control four (4) times as much property to support the same production amount: it now requires 2,596 acres to support a well producing 3,000 GPM.

8. In my experience and for the depths necessary in the most productive areas of the Simsboro Aquifer, the minimum well size to be economically viable selling water to public water systems and industry and for large-scale irrigation purposes will accommodate a pump that could

pump at least 700 GPM (although a preferred well capacity would be at least 1,000 GPM). Under Old Rule 6.1, a landowner with circular property of at least 35 acres could produce 700 GPM. Under New Rule 6.1, as applied through the formula in Rule 7.1, a landowner now must have 141 acres to support a 700 GPM well. This effectively means that the landowner's groundwater rights have been devalued by 75 percent.

9. Individuals or companies that are putting groundwater projects together to meet the needs of Austin, Round Rock, Georgetown, Taylor, Hutto or other cities or industries (such as the Samsung microchip factory in Taylor County) must be able to lease or purchase groundwater rights sufficient to meet needs while still having economically viable wells. In my experience, project developers likely have little to no interest in leasing or purchasing groundwater rights in tracts less than 35 acres under the Old Rules, or less than 140 acres under the New Rules. Because municipal and industrial uses are the highest and best uses for groundwater in this geographic area, the New Rules effectively remove tracts of less than 140 acres from that specific market. In terms of economics, project developers prefer wells that can produce 1,500 GPM or more, which the Simsboro Aquifer will support across most of Robertson County and a large part of northern Brazos County.

10. I am specifically familiar with the Upwell Brazos Valley Farms holdings in Robertson County, having represented its former owner, Dr. Clifford A. Skiles, and having assisted in the transaction resulting in the sale of that property to Upwell Brazos Valley Farms. I am familiar with and worked extensively with David Lynch of Core Capital in effectuating that transaction, and am aware from that transaction, my personal experience in developing wells in the Simsboro aquifer, and my interactions with Mr. Lynch that Upwell cannot economically buy or lease groundwater rights today if the parcel size will not support a well capable of producing at least 700 GPM.

11. Further, the New Rules deprive landowners of an equal or fair opportunity to produce a fair share of the groundwater beneath their land. For example, assume a landowner with a permit under the New Rules has a neighbor with a permit issued under the Old Rules. That neighbor that is permitted under the Old Rules, assuming identical radii for both wells, can produce four (4) times as much water per acre owned as the landowner under the New Rules. Due to the nature of the Simsboro Aquifer, the neighbor is producing water that would otherwise remain under the landowner's land. The Simsboro Aquifer is under artesian or confined conditions across most of Robertson and Brazos counties. Therefore, pumping water from a well in the Simsboro Aquifer lowers the pressure in the well casing and creates a low-pressure area that extends outward from the well bore in the shape of an inverted cone. This "cone of depression" continues to extend outward as the well is pumped over time. If neighboring owners are not allowed to pump groundwater at the same rate, then the unequal cones of depression result in movement of water (which can be considered as drainage) from one tract to the next. Assuming identical land area and that aquifer hydraulic characteristics are the same beneath the two adjacent properties, the cone of depression caused by the Old Rule landowner will be four (4) times deeper than the cone of depression caused by the well owned by the New Rule landowner. While individual cones of depression are generally circular in vast artesian aquifers such as the Simsboro, when two cones of depression intersect the shape changes as the two separate cones of depression merge and interference drawdown between wells is additive. Where the Old Rule landowner pumps four (4) times the rate than the New Rule landowner pumps, the cone of depression would be such that water moves away from the New Rule (i.e., less pumping) landowner's property toward the Old Rule (i.e., more pumping) landowner's property. This difference in pumping rates causes disparate "impacts" and, while the storage depletion would be very small in an artesian aquifer, results in the larger pumper draining water from the smaller pumper's property. Conversely, under

the Old Rules where the pumping rates from two wells on two adjacent (and identical) properties are identical (and assuming essentially identical aquifer hydraulic characteristics on the adjacent properties), the two separate cones of depression would be essentially identical and when they merge form a flow divide essentially half-way between the wells. At the flow divide water moves in opposite directions; therefore, neither property appreciably drains the other one – or at least neither property is drained more than the other.

12. Under the Old Rules, where the pumping rates are equal, both parties have an equal or fair opportunity to recover their fair share of the groundwater. However, New Rule 6.1, as applied in the formula in Rule 7.1, causes holders of “new” permits to suffer drainage from their neighbors pumping under the Old Rules. This is literally treating different owners in the same aquifer differently.

13. BVGCD also changed its Rule 7.1 on September 14, 2023. Before that date, some landowners were allowed to “overlap” the circles surrounding wells on their own properties in such a way as to increase the amount of allowable production they could get from a specific property. As of September 14, 2023, however, BVGCD amended Rule 7.1 to prohibit overlapping circles even on one’s own property. That rule change has the effect of diminishing the amount of groundwater that can be produced from a specific property.

14. As noted above, BVGCD’s production and spacing rules are based on a formula that contemplates a circle around any given wellbore. But as noted in the deposition of Alan Day, there are no tracts in the district that are circular in shape. Most properties are square, rectangular or some other non-circular shape. The practical effect of this is to eliminate all the area outside of the circular shapes from consideration in production allowables. For example, in a perfectly square section of 640 acres, a circle with a radius of 2,640 feet will encompass about 500 acres, leaving

140 acres out of the calculation of production allocations. An owner could drill small wells in the “corners” of the section, but those wells would have to be drilled on much smaller circles that would not be large enough to support a commercial or agricultural well drilled into the Simsboro aquifer. This effect is more pronounced on tracts that are irregular in shape, which is true of most tracts in the District.

15. I have reviewed the transcript of the July 16, 2025, deposition of the corporate representative of Brazos Valley Groundwater Conservation District, Alan Day. In that deposition he described a methodology for identifying individuals or entities who own parcels of land containing 35 acres or more overlying the Simsboro aquifer in Robertson County, Texas who do not have a pre-September 14, 2023, permit to produce groundwater from that aquifer. The identity of those landowners is ascertainable through the methodology he describes. Specifically, he states that he could determine the precise number of people in the District who own more than 35 acres without pre-September 14, 2023 permits by going to the Robertson County Appraisal District and getting them to give a listing of any parcels with 35 acres or more, then taking that document and going to BVGCD’s list of permits issued before September 14, 2023 and determine how many of owners on the Appraisal District’s list don’t have permits.

16. I and my employees have performed a similar preliminary analysis using almost the exact same methodology as that described by Mr. Day, except that we did not use the interactive map on the BVGCD website to identify parcels. Instead, we used data from the Robertson County Appraisal District, which Mr. Day identified as the source of the data used in the BVGCD interactive map. We were able to isolate and identify those parcels of land containing 35 acres or more in Robertson County, and we could use that data to identify the present owners according to the Appraisal District. We selected 35 acres as a cutoff point because that is the

number of acres that would have supported a 700 GPM well under Rules 6.1 and 7.1 before those Rules were changed in 2023. Based on the selection criteria, we estimate that there are approximately 3,186 tracts of land in Robertson County containing 35 acres or more. Realistically, there are probably fewer tracts than that where a 700 GPM well could be drilled because none of the tracts are circular. That reality will eliminate tracts where you cannot “fit” a circle with a radius of 700 feet inside the boundaries of a 35-acre tract due to its shape. We will be able to further refine the number of tracts and the identity of their owners by applying accepted mathematical formulas to find a final number of tracts. Further, many of the identified tracts are under the same ownership, so that the approximate number of actual landowners will be less than 3,186. Finally, BVGCD has produced a list of all permits to produce groundwater that it currently has issued, approximately 1,062 permits in all. We can cross-tabulate that list against the list we have developed of tracts and owners, subtracting the existing pre-September 14, 2023, permits from the overall list. That will yield about 2,125 tracts of 35 acres or more that do not have existing permits and, again, a smaller number of actual landowners. The changes in Rules 6.1 and 7.1 on September 14, 2023, affect each of these owners in the same way: they are unable to apply for or produce the same amount of groundwater they would have been able to produce under permits issued before the Rules were changed.

I declare under penalty of perjury that this declaration is true and correct to the best of my knowledge.

Executed on August 21, 2025, in Round Rock, Texas.

/s/ Michael R. Thornhill
Michael R. Thornhill

EXHIBIT C

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

FAZZINO INVESTMENTS, LP
for itself and all others similarly situated,

PLAINTIFFS

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V.

CASE NO. 6:25-CV-0001-ADA-DTG

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT,**

DEFENDANT

**DECLARATION OF RICHARD L. COFFMAN IN SUPPORT OF PLAINTIFF’S
MOTION FOR CLASS CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I, Richard L. Coffman, declare as follows:

1. I am an attorney in good standing licensed to practice law in the State of Texas and in this District. I am also admitted to practice in (i) the United States District Courts for the Eastern, Northern, and Southern Districts of Texas, the Central and Southern Districts of Illinois, the Eastern District of Michigan, and the District of Colorado, (ii) the United States Court of Appeals for the First, Third, Fifth, Sixth, Seventh, Ninth, and Tenth Circuits, (iii) the United States Court of Federal Claims, (iv) the United States Supreme Court, and (v) *pro hac vice* in various other state and federal courts.

2. I submit this Declaration in support of Plaintiff’s Motion for Class Certification. I have personal knowledge of the statements in this Declaration, all of which are true, and, if called as a witness, I could, and would, testify competently about them.

3. I am a shareholder in, and President of, Richard L. Coffman, P.C. dba the Coffman Law Firm in Houston, Texas. I have practiced law for over thirty-five years. I am AV peer review rated by the Martindale-Hubbell Law Directory and a Texas Super Lawyer (Class Actions and Mass Torts) (2015-2025). I have a B.A. in accounting from Texas Lutheran University (1978), a Master of Professional Accounting from the University of Texas (1980),

and a J.D. from the University of Texas Law School (1989). I also am a C.P.A. with six years' experience working in international public accounting firms prior to attending law school. I also taught undergraduate classes in accounting and taxation at the University of Washington and University of Texas business schools as an adjunct faculty member.

4. For my entire legal career, my practice has focused on business and consumer cases, including cases, agriculture cases, antitrust cases, data breach cases, class actions, commercial mass torts, and other complex commercial disputes in state and federal courts throughout the United States—principally representing plaintiffs. I have served in leadership roles on behalf of plaintiffs in MDL and non-MDL class action and commercial mass tort litigation. I also have represented (and currently represent) opt-out plaintiffs in antitrust, business, and consumer class action litigation. For more information, please visit my Firm website, www.coffmanlawfirm.com.

5. I have significant class action leadership experience in, for example, MDL No. 2357; *In re Zappos.com, Inc. Customer Data Security Breach Litigation* (D. Nev.) (Co-Lead Class Counsel) (consumer class action on behalf of millions of consumers whose confidential personal information and account passwords were compromised); and MDL No. 2046; *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation* (S.D. Tex.) (Co-Lead Class Counsel for Financial Institutions) (over 130 million payment cards compromised). I am currently co-counsel for the City of San Diego in a potential multi-hundred-million-dollar penalty case against Experian for failing to notify 2.2 million California victims of a data breach in *The People of the State of California vs. Experian Data Corp.*; No. 30-2019-01047183-CU-BT-CJC (Sup. Ct. Orange County, Cal.). I also served as Co-Lead Class Counsel in *Wilson v. Texas Windstorm Insurance Association*; No. 09-CV-0421 (Dist. Ct., Galveston County, Texas), a case encompassing both a class action and a mass tort action on behalf of over 2000 property owners on Bolivar Peninsula, Texas, whose homes were destroyed by Hurricane Ike. Plaintiffs recovered approximately \$175 million in additional insurance benefits.

6. I also represented, as counsel of record or as of counsel, (i) nine of the state indirect purchaser class representatives in MDL No. 1819; *In re Static Random Access Memory (SRAM) Antitrust Litigation* (N.D. Cal.) (\$41 million settlement), (ii) the Nevada indirect purchaser class representative in MDL No 1827; *In re TFT-LCD (Flat Panel) Antitrust Litigation* (N.D. Cal.) (\$1.1 billion settlement), and (iii) the Texas, Florida, Illinois, and Iowa sub-class representatives in the Financial Institutions Track in MDL No. 2583; *In re The Home Depot, Inc. Customer Data Security Breach Litigation* (N.D. Ga.). I also served as lead counsel or co-lead counsel in other financial class actions, including *Robert Castro, Jr., v. PaineWebber, Inc.*; 1:94CV65 (E.D. Tex.) (securities fraud involving a limited partnership investment); *Ronald E. Choinacki v. American Home Products Corporation*; No. 2:98CV3573 (D.N.J.) (underpaid lump sum pension benefits); and *Belinda Myers-Garrison v. Johnson & Johnson* No. 9:97CV0087 (E.D. Tex.) (underpaid lump sum pension benefits).

7. In takings litigation, I, along with co-counsel, recently filed *Thomas, et al v. Suwanee Valley Electric Cooperative, Inc.*; No. 3:24-01213-HES-MCR (M.D. Fla), a class action on behalf of landowners in four Florida counties against an electric cooperative for constructing, operating, and leasing a 4,100+ mile fiber optic communications network for purposes unrelated to the transmission and distribution of electricity without obtaining the landowners' authorization and/or paying them for the right to do so. I also was co-lead counsel for plaintiffs in *Quebedeaux v. United States*; Cause No. 1:11-cv-00389-FMA (Ct. Fed. Cl.), a takings class action on behalf of landowners and business owners in a 4600 square mile area of the Atchafalaya River basin in south central Louisiana whose homes, businesses, and property were damaged and/or destroyed by floodwaters when the federal government opened the Morganza Spillway on the Mississippi River.

8. On the landowner commercial mass tort front, I, with co-counsel, currently represent over 700 individual property owners and business owners in *In re TPC Group Litigation*, No. A2020-0236-MDL (Dist. Ct., Orange County, Texas), whose property was damaged or destroyed by the Thanksgiving 2019 explosions at the TPC petrochemical plant in

Port Neches, Texas. I, with co-counsel, previously represented (i) over 9000 individual corn farmers and grain handlers in over forty states in MDL No. 2591; *In re Syngenta AG MIR162 Corn Litigation* (D. Kan.), a GMO seed case (\$1.51 billion settlement), and (ii) over 900 individual Texas, Louisiana and Arkansas rice farmers against Bayer CropScience for contaminating the U.S. long grain rice seed stock with genetically engineered rice in MDL No. 1811; *In re Genetically Modified Rice Litigation* (E.D. Mo.) (\$750 million settlement).

9. I am currently co-lead counsel for thirty grocery wholesaler, grocery retail chain, foodservice company, and meat and poultry distributor class action opt-out plaintiffs in antitrust litigation against the seventeen largest U.S. chicken producers for manipulating chicken prices in No. 1:16-vc-08637; *In re Broiler Chicken Antitrust Litigation* (N.D. Ill.). I also represent many of these companies as class action opt-out plaintiffs in antitrust litigation against the major U.S. pork and beef producers for unlawfully raising and fixing the prices of pork and beef in *In re Pork Antitrust Litigation*; MDL No. 2998 (D. Minn.) and *In re Cattle and Beef Antitrust Litigation*; No. 3031 (D. Minn.). I previously represented many of these companies as class action opt-out plaintiffs in antitrust litigation against StarKist, Bumble Bee, and Chicken of the Sea for fixing the price of canned tuna in MDL No. 2670; *In re Packaged Seafood Products Antitrust Litigation* (S.D. Cal.). In the past, I represented a group of 200 individual pharmacy and grocery companies with over 1100 retail locations in MDL No. 997; *In re Brand- Name Prescription Drug Antitrust Litigation* (N.D. Ill.).

10. I, along with co-counsel, Marvin W. Jones and C. Brantley Jones of Sprouse Shrader Smith PLLC, in conjunction with Plaintiff's Motion for Class Certification, seek to be appointed Co-Lead Class Counsel. To date, proposed Co-Lead Class Counsel have collectively spent 870 hours (i) identifying and investigating the facts, legal claims, and remedies for Plaintiff and the putative class members, including interviewing landowners injured by the BVGCD Rule changes and commercial water companies about the impact of the Rule changes on drilling new water wells in the District, (ii) drafting and filing Plaintiff's Complaint, (iii) drafting the Joint Rule 26 Report, (iv) participating in the Rule 26(f) conference with defense counsel, (v) drafting

a proposed scheduling order, (vi) drafting and serving Plaintiff's Initial Disclosures, (vii) serving multiple sets of discovery on BVGCD, (viii) reviewing BVGCD's document production and written discovery responses, (ix) responding to discovery served on Plaintiff by BVGCD, (x) preparing for and deposing BVGCD, (xi) drafting and filing this class certification motion and exhibits, and (xii) regularly conferring with co-counsel regarding case strategy and case management.

11. If certified, the proposed class would be easily manageable—especially since Plaintiff does not seek damages. Proposed Co-Lead Class Counsel and support staff are capable and experienced at managing large groups of clients and cases with more clients than the number of putative class members here. *See* ¶ 8, *supra*.

12. To date, proposed Co-Lead Class Counsel also have funded over \$15,800 of litigation expenses and are committed to pay whatever is necessary to see this litigation through to its conclusion, including trial. Proposed Co-Lead Class Counsel also have the manpower resources to go the distance and will devote them to the successful prosecution of this case. To date, proposed Co-Lead Class Counsel have operated as a cohesive, efficient, and well-organized attorney team and will continue to do so going forward.

I declare under penalty of perjury that this declaration is true and correct to the best of my knowledge.

Executed on August 21, 2025, in Houston, Texas.

/s/ Richard L. Coffman
Richard L. Coffman

EXHIBIT D

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

FAZZINO INVESTMENTS, LP
for itself and all others similarly situated,

PLAINTIFFS

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V.

CASE NO. 6:25-CV-0001-ADA-DTG

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT,**

DEFENDANT

**DECLARATION OF MARVIN W. JONES IN SUPPORT OF PLAINTIFF’S MOTION
FOR CLASS CERTIFICATION**

Pursuant to 28 U.S.C.A. § 1746, I, Marvin W. Jones, declare as follows:

1. I am an attorney in good standing licensed to practice law in the State of Texas. I am also admitted to practice in the United States District Courts for the Western, Southern and Northern Districts of Texas, the District of Colorado, the Northern District of California, the United States Court of Appeals for the Fifth, Tenth and Eleventh Circuits, and the United States Supreme Court. I submit this Declaration in support of Plaintiff’s Motion for Class Certification. I have personal knowledge of the statements in this Declaration, all of which are true, and, if called as a witness, I could, and would, testify competently about them.

2. I have practiced law in Amarillo, Texas since being admitted to the bar in June 1977. I am a member of the Sprouse Shrader Smith PLLC firm, which has offices in Amarillo, Austin, Victoria, Dalhart and Round Rock. I have tried over 100 jury trials in state and federal district courts across Texas. I am a graduate of Baylor Law School, where I graduated first in my class and served as editor-in-chief of the Baylor Law Review. I am AV peer review rated by the Martindale-Hubbell Law Directory and have been recognized as a Texas Super Lawyer in every

year from 2006 to 2025. I was inducted into the American College of Trial Lawyers in 2005. I have been Board Certified in Civil Trial Law by the Texas Board of Legal Specialization since 1986. I served on the faculty at the Baylor Academy of the Advocate School of Trial program in St. Andrews, Scotland from 2015 to 2022, and I am recognized as a Jaworski Fellow by Baylor Law School. I served on the Texas Board of Disciplinary Appeals from 2009 to 2015, the last year as its chairperson.

3. I have the following experience in cases involving groundwater rights: I represented T. Boone Pickens and his company Mesa Water in handling and litigating issues with permitting of 200,000 acres of groundwater rights before the Panhandle Groundwater Conservation District, the Texas Water Development Board and the TCEQ. Since that time, I have represented a large number of groundwater rights owners in disputes with groundwater conservation districts, ranging from the top of the Panhandle to Reeves County in West Texas, Victoria County in South Texas, Montgomery County on the Gulf Coast, and in Robertson County. I have been involved in several lawsuits involving groundwater rights, including:

- *Mesa Water, L.P. and G&J Ranch, Inc. v. Texas Water Development Board*, No. D-1-GN-10-000819 in the District Court in Travis County, Texas;
- *Republic Water Co. of Texas v. Middle Pecos Groundwater Conservation District*, No. 4:16-CV-33 in the United States District Court for the Western District of Texas, El Paso Division;
- *Quadvest v. Lone Star Groundwater Conservation District*, No. 15-08-08942 in the 284th District Court for Montgomery County, Texas;

- *Vanderpool Management, L.P. v. Bandera County River Authority and Groundwater District*, No. 5:23-CV-461 in the United States District Court for the Western District of Texas, San Antonio Division.

4. My partner Brantley Jones and I prosecuted a leading groundwater case before the Texas Supreme Court, *Coyote Lake Ranch v. City of Lubbock*, 498 S.W.3d 53 (Tex. 2016), establishing that legal principles from oil and gas cases can be used in groundwater cases.

5. With respect to the defendant in this case, Brantley Jones and I successfully prosecuted a groundwater rights case against Brazos Valley Groundwater Conservation District, *Stratta v. Roe*, 961 F.3d 340 (5th Cir. 2020). That seminal case established that 42 U.S.C.A. Section 1983 may be used to bring suit in federal court against Texas groundwater conservation districts to vindicate the denial of constitutionally protected rights in groundwater. Both *Coyote Lake* and *Stratta v. Roe* are extensively cited and discussed in Texas groundwater publications and seminars.

6. Brantley Jones and I are currently involved in prosecuting litigation under Section 1983 in *BLF Land, LLC and Blaine Larsen Farms, Inc., v. North Plains Groundwater Conservation District*, No. 2:23-CV-00133 in the United States District Court for the Northern District of Texas, Amarillo Division, and have recently been involved in a hearing before the State Office of Administrative Hearings involving groundwater rights: *Vanderpool Management, L.P. Application for Two Well Permits from Bandera County River Authority and Groundwater District*, Docket No. 9556-23-21880.

7. Sprouse Shrader Smith PLLC has the manpower resources to successfully prosecute this case. The firm has over forty lawyers with thirty support staff in five offices in Texas, including Amarillo, Austin, Dalhart, Round Rock and Victoria. The firm utilizes litigation software designed in-house to handle the flow of documents produced in complex cases and has

paralegals who are experienced in both state and federal court cases. For more information about the Sprouse Shrader Smith PLLC Firm and my law practice, please visit our website at www.sprouselaw.com.

8. To date, my partner Brantley Jones and I have worked cohesively with Richard Coffman in handling the preliminary stages of this case. Mr. Coffman has extensive experience in handling class action matters, and Brantley Jones and I have extensive experience in litigating disputes involving groundwater issues. Together, we are able to bring our experience to bear on this case without unnecessary duplication of efforts.

9. Prior to bringing this action, I had extensive discussions with Charles Fazzino regarding the claims being asserted and the potential advantages and disadvantages of bringing those claims as a class action. Specifically, I explained to Mr. Fazzino that a class action would resolve his individual issues with Brazos Valley Groundwater Conservation District while also benefitting other similarly situated landowners whose rights were impacted by BVGCD's 2023 Rule changes. I explained that he would be the class representative, which might involve having to respond to discovery, give a deposition, and appear at hearings or trial. I explained that he would not be able to "control" the litigation as he might be able to do if he were the only plaintiff because we would need to take into consideration the rights and interests of the class. I explained that his rights and interests were identical to those of the class in terms of the relief we would seek. Based on those conversations, Mr. Fazzino expressed his desire and consent to proceed with this case as a class action.

10. Immediately after this suit was filed, I had a conversation with Jose de la Fuente, counsel for BVGCD, concerning the case. During that conversation, I conveyed an offer to reach a class-wide settlement that would result in zero out-of-pocket cost to BVGCD. I have repeated

that same offer two additional times since then. Each time, Mr. de la Fuente rejected the offer and has not made any counterproposal.

11. As counsel for Plaintiff, I served discovery on Defendant, including Request for Admission No. 17, which asked Defendant to admit that “the proposed Class consists of more than one hundred (100) landowners.” Defendant denied that request. Request for Admission No. 18 asked Defendant to admit that “the precise number and identities of the Class Members of the proposed Class are readily ascertainable from the District’s records.” Defendant denied that request as well. In our deposition of BVGCD’s corporate representative, Alan Day, Mr. Day admitted that the proposed class logically contains more than 100 members, and agreed that the identity of members of the class could be determined from records kept by the District and records from the Robertson County Appraisal District upon which the District routinely relies. Following that deposition, we served additional discovery requests on the District asking for the number and identities of the properties making up the Class, and the contact information for the putative Class members. Responses to that discovery are due on or before September 5, 2025.

I declare under penalty of perjury that this declaration is true and correct to the best of my knowledge.

Executed on August 21, 2025, at Amarillo, Texas

/s/ Marvin W. Jones
Marvin W. Jones

EXHIBIT E

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

FAZZINO INVESTMENTS, LP
for itself and all others similarly situated,

PLAINTIFFS

V.

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT,**

DEFENDANT

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CASE NO. 6:25-CV-0001-ADA-DTG

**DECLARATION OF CULLOM BRANTLEY JONES IN SUPPORT OF PLAINTIFF’S
MOTION FOR CLASS CERTIFICATION**

Pursuant to 28 U.S.C.A. § 1746, I, Cullom Brantley Jones, declare as follows:

1. I am an attorney in good standing licensed to practice law in the State of Texas. I am also admitted to practice in the United States District Courts for the Western, Southern and Northern Districts of Texas, the Northern District of Texas, the United States Court of Appeals for the Fifth Circuit. I submit this Declaration in support of Plaintiff’s Motion for Class Certification. I have personal knowledge of the statements in this Declaration, all of which are true, and, if called as a witness, I could, and would, testify competently about them.

2. I have practiced law in Amarillo, Texas since January of 2012. I am a member of the Sprouse Shrader Smith PLLC firm, which has offices in Amarillo, Austin, Victoria, Dalhart and Round Rock. I am a graduate of Baylor Law School, and Southwestern University. I have tried jury trials in state and federal courts and have significant litigation experience in a variety of fields including labor and employment, real property, personal injury, oil & gas, and groundwater. I’ve served on the National Trial Competition Committee of the Texas Young Lawyer’s Association

since 2013, and in 2017 received the Texas Young Lawyer's Association's President's Award of Merit for my work on the National Trial Competition.

3. I have briefed and argued appeals in major groundwater rights cases, specifically I was responsible for briefing and arguing *Coyote Lake Ranch v. City of Lubbock* before the Seventh Court of Appeals, as well as *Stratta v. Roe* before the 5th Circuit. Both *Stratta* and *Coyote Lake* proved transformational to the broader body of groundwater law in Texas.

4. While *Coyote Lake* was pending before the Texas Supreme Court, the Texas Senate Committee on Agriculture, Water & Rural Affairs invited me to provide testimony regarding the application of oil and gas concepts to groundwater disputes.

5. Other groundwater cases I have been involved in include:

- *Quadvest v. Lone Star Groundwater Conservation District*, No. 15-08-08942 in the 284th District Court for Montgomery County, Texas;
- *Vanderpool Management, L.P. v. Bandera County River Authority and Groundwater District*, No. 5:23-CV-461 in the United States District Court for the Western District of Texas, San Antonio Division.
- *BLF Land, LLC v. North Plains Groundwater Conservation District*, No. 2:23-CV-133-Z, Northern District of Texas, Amarillo Division.
- *Cactus Water Services v. COG Operating, LLC*, NO. 23-0676 currently pending before the Supreme Court of Texas.

6. In addition to trial and appellate litigation, I also have experience in litigating groundwater rights disputes before the State Office of Administrative Hearings including the matter of *Vanderpool Management, L.P. Application for Two Well Permits from Bandera County River Authority and Groundwater District*, Docket No. 9556-23-21880.

I declare under penalty of perjury that this declaration is true and correct to the best of my knowledge.

Executed on August 21, 2025, at Amarillo, Texas

/s/ Brantley Jones
C. Brantley Jones

EXHIBIT F

ALAN DAY
FAZZINO INVESTMENTS vs BRAZOS VALLEY

July 16, 2025

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

FAZZINO INVESTMENTS, LP,)
for itself and all others))
similarly situated,)
)
Plaintiffs,)

Vs.) CASE NO. 6:25-CV-0001-ADA-DTG)

BRAZOS VALLEY GROUNDWATER))
CONSERVATION DISTRICT,)
)
Defendant.)

* * * * *

VIDEOTAPED DEPOSITION OF

ALAN DAY

Wednesday, JULY 16, 2025

* * * * *

VIDEOTAPED DEPOSITION OF ALAN DAY, having been
duly sworn by Khadijah Holloway, Notary Public in and
for the State of Texas. The witness appeared in person
at Hotel Indigo, 211 Clay Avenue, Waco, Texas, from 9:06
a.m. to 5:38 p.m., pursuant to Texas Rules of Civil
Procedure and any provisions stated on the record or
attached hereto.

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APPEARANCES OF COUNSEL

On behalf of the Plaintiffs, Fazzino Investments, LP,
for itself and all others similarly situated

MARVIN W. JONES, ESQ.
SPOUSE SHRADER SMITH, PLLC
701 South Taylor Street, Suite 500
Amarillo, Texas 79105
806-468-3300
marty.jones@sprouselaw.com

RICHARD L. COFFMAN, ESQ.
THE COFFMAN LAW FIRM
3355 West Alabama Street, Suite 240
Houston, Texas 77098
713-528-6700
rcoffman@coffmanlawfirm.com

On behalf of the Defendant, Brazos Valley Groundwater
Conservation District, and the Witness, Alan Day:

JOSE DE LA FUENTE, ESQ.
LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
512-322-5884
jdelafuente@lglawfirm.com

Also present:

Jason Rolen, Videographer

1 the page where you find 36.101. Are you familiar with
2 this?

3 A. I've -- can't say I've ever read it before.

4 Q. Well, let me ask you this, in general. Have
5 you read Chapter 36, the Texas Water Code?

6 A. Parts.

7 Q. Which -- which parts do you recall reading?

8 A. Things to do with DFCs. Spent a good bit of
9 time in there, but most of the time that I spend is in
10 our rules, which are propagated from Chapter 36, and/or
11 if I have a particular question based on GMA planning or
12 whatever it might be, then go in and specifically read.
13 So --

14 Q. Other than the parts of the rules relating to
15 desired future conditions and groundwater management
16 area responsibilities for those, have you read portions
17 relating to management plans?

18 A. Certainly.

19 Q. Is it your testimony that you don't recall
20 looking at 36.101?

21 A. That is correct. I can't say that I
22 specifically have read this.

23 Q. So 36.101 talks about rule rule-making power
24 of the District. "The District may make and enforce
25 rules, including rules limiting groundwater production

1 based on tract size and spacing the wells," and so
2 forth. You see that?

3 A. Yes, sir.

4 Q. And then under Paragraph A, we see this
5 statement. "In adopting a rule under this chapter, a
6 District shall:" And Paragraph 2 says, "Develop rules
7 that are fair and impartial."

8 A. Yes, sir.

9 Q. Do you understand that to be the obligation of
10 the Groundwater Conservation District and its
11 rule-making?

12 MR. DE LA FUENTE: Object to form.

13 THE WITNESS: That's what I understand, yes.

14 BY MR. JONES:

15 Q. Do you agree that Brazos Valley Groundwater
16 Conservation District should treat everyone fairly and
17 the same?

18 A. Yes, sir.

19 MR. DE LA FUENTE: Object to form.

20 BY MR. JONES:

21 Q. How does the District ensure that groundwater
22 rights owners in the District are treated fairly and the
23 same?

24 MR. DE LA FUENTE: Object to form.

25 THE WITNESS: Everyone is subject to the rules

1 MR. JONES: We haven't sent you a deed?

2 MR. DE LA FUENTE: You sent me a deed, but
3 your responses say it includes this 69-acre tract, but
4 you have not said that's the only tract.

5 BY MR. JONES:

6 Q. Have you seen the deed to this 69-acre tract
7 that Mr. de la Fuente just referred to?

8 A. Not that I remember.

9 Q. Are you aware that Fazzino Investments owns a
10 69-acre tract that has no current permit on it?

11 A. Yes.

12 Q. Do you know where that tract is?

13 A. Yes.

14 Q. How do you know that?

15 A. I knew that he owned a 69-acre tract that was
16 -- basically surrounded the wrecking yard, that sits
17 between Highway 6 and Old Hearne Road. I have spoken
18 directly with Charles Fazzino about that tract.

19 Q. Okay. What has that conversation been like?

20 A. What has it been like?

21 Q. Yeah. What -- what did Mr. Fazzino say to
22 you, you say to him?

23 A. He -- he needed to know what was the largest
24 footprint that he could draw on the property and how
25 much water he could get under today's rules?

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1 define what contiguous acres are. It -- it didn't
2 change anything as to what we were already doing. It
3 just matched what we were doing.

4 Q. So we see in all instances, 2004, 2017, 2020,
5 the expression, "as based on the best available
6 science." Do you see that?

7 A. Yes.

8 Q. Now, was there any additional modeling or
9 other scientific data considered by the District at that
10 time to remove the word majority and to add this other
11 expression, "production-based acreage required by
12 District Rule 7.1(c)"?

13 A. No.

14 Q. Well, earlier I had asked you about properties
15 that are in the shape of a circle or square and let me
16 ask you this. Do you know of any properties in your
17 District that are -- the ownership is in a circle?

18 A. No, sir. I do not.

19 Q. There are some up in the North Plains
20 Groundwater Conservation District, actually, ownership
21 of a circle, and the corners are owned differently or
22 separately. Are you aware of that?

23 A. I was not aware of that.

24 Q. So if I have a 640-acre purely square section
25 of land, do you know what maximum size of circle I can

1 A. That's correct.

2 Q. They have the potential to produce --

3 A. That would be correct.

4 Q. -- groundwater up to four times or two times?

5 A. Let me read the -- it again --

6 Q. Sure.

7 A. -- just to make sure. No, it would be up to
8 two times the rate. They can produce up to two times
9 the rate.

10 Q. All right. So you would admit that landowners
11 with a pre-September 14, 2023, permit in close proximity
12 to plaintiffs from class members' properties without
13 groundwater wells have the potential of producing
14 groundwater rates up to two times the rates allowed to
15 plaintiffs and class members under the new rules?

16 A. Correct. That's correct.

17 Q. Sixteen. Would you agree that the District is
18 aware that there are folks out there wanting to supply
19 water to municipalities and industries in other parts of
20 Texas from the Simsboro Aquifer in your District?

21 A. There are those that have -- have said they
22 want to do that, yes. And we now have a project that
23 says that very thing.

24 Q. All right. Request for Admission Number 17
25 asks you to admit that the proposed class, as defined in

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1 our complaint, consists of more than 100 landowners.

2 And you have denied that. Why is that?

3 A. You're -- I think you're assuming that every
4 property is the same. And every property is not the
5 same. And they are shaped differently. So there's
6 certain amounts of things that can and cannot be done.
7 So there is no continuity in what these supposed class
8 members are going to be. There's -- it's not that --
9 that you -- we don't know who and who's not going to
10 come for a permit. Don't have a clue. Does -- is
11 everyone with 35 acres or whatever the number, are they
12 all going to come in for a permit? We don't know
13 anything until they actually come in for a permit. We
14 don't know anything.

15 Q. So let's break this down. The request asked
16 you to admit the proposed class, that is, say,
17 landowners within your District who owned more than 35
18 acres, consist of more than 100 landowners.

19 My question is, are there more than 100
20 landowners in your District who have more than 35 acres
21 and don't have a permit yet?

22 A. I don't know the exact answer to that. I can
23 personally go -- I assume that there are, but I have not
24 gone through and trying to find every property that's 35
25 acres and/or more and doesn't have a permit. And there

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1 is a layer on my map that will allow anyone, if they
2 would like to go do that, they're more than happy to go
3 do that.

4 Q. You could have done that in responding to this
5 request?

6 MR. DE LA FUENTE: Object to form.

7 BY MR. JONES:

8 Q. Correct?

9 MR. DE LA FUENTE: Object to form.

10 THE WITNESS: I could have.

11 BY MR. JONES:

12 Q. But you didn't?

13 A. I did not do that.

14 Q. If you had done that, you'd know whether the
15 proposed class consists of more than 100 landowners or
16 not.

17 MR. DE LA FUENTE: Object to form.

18 THE WITNESS: And as I'm saying, I would
19 assume that there are. It seemed logical that there is,
20 but I did not perform that task.

21 BY MR. JONES:

22 Q. Why would you assume that they're more than
23 100 such landowners?

24 A. Just from the knowledge that I have of the
25 District. And as many times as I've been on the map,

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1 just personal knowledge.

2 MR. JONES: There's a gnat in here.

3 MR. DE LA FUENTE: Has been all day.

4 BY MR. JONES:

5 Q. Could you determine the precise number of
6 people in the District who own more than 35 unpermitted
7 acres by looking at the information the District has?

8 A. By looking at the map and someone taking the
9 time to go through every property, and by going --likely
10 having to go to the Appraisal District and get them to
11 give us a listing of anything 35 acres or more, and then
12 taking that document and going to our permit list and
13 go, how many of these don't have permits, it's possible
14 to be done.

15 Q. Right. See in a prior exhibit, about 1,000
16 permits. Is that the right number?

17 A. I -- I -- yes, at least that.

18 Q. All right. The information you can get from
19 the Appraisal District, you can put in a spreadsheet,
20 correct?

21 A. I'm sure you can -- I feel like you could get
22 in a spreadsheet form.

23 Q. If you put it in a spreadsheet, you know how
24 to sort the spreadsheet according to information that in
25 your columns, right?

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1 A. Sure. Yes, I do.

2 Q. And so if the Appraisal District gives you a
3 number for legal acres of each tract that they have
4 information on, you could put that in a spreadsheet and
5 then sort it by the number of acres, correct?

6 A. That sounds correct.

7 Q. And if you were clever with Excel, you could
8 say I want to know only the acreages with more than 35
9 acres, right?

10 A. I -- sounds correct, yes.

11 Q. You probably done things like that with Excel,
12 haven't you?

13 A. I have with Excel, sure.

14 Q. And so it's ascertainable, isn't it, how many
15 actual tracts out there are more than 35 acres?

16 MR. DE LA FUENTE: Object to form.

17 THE WITNESS: Yes, it is absolutely
18 ascertainable.

19 BY MR. JONES:

20 Q. And you can absolutely cross-tabulate that
21 with the tracts that you have permits existing on
22 already, you couldn't you?

23 MR. DE LA FUENTE: Object to form.

24 THE WITNESS: It certainly could be done.

25 BY MR. JONES:

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1 Q. And by doing that, you can ascertain the
2 identities and number of tracts over 35 acres where
3 there's no permit existing today, correct?

4 A. Again, that could be done.

5 Q. You could do that, can't you?

6 MR. DE LA FUENTE: Object to form.

7 THE WITNESS: I could. That's not something
8 we house or keep.

9 BY MR. JONES:

10 Q. I understand. But if, for example, you had a
11 lawsuit and wanted to know how many class members were
12 out there and who they were you have the tools and the
13 information available to ascertain that, don't you?

14 MR. DE LA FUENTE: Object to form.

15 THE WITNESS: I have some of the tools. And
16 then there's -- others have tools. So it -- it would be
17 an endeavor.

18 BY MR. JONES:

19 Q. But doable?

20 A. It -- it's a doable thing.

21 Q. All right. Request 20, has to do with your
22 familiarity with a couple of cases. Have you read
23 Stratta versus Row?

24 A. No, I have not.

25 Q. Really? That has to do with this District,

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CERTIFICATE OF TRANSCRIPTIONIST

I, NANCY KRAKOWER, Legal Transcriptionist, do hereby certify:

That the foregoing is a complete and true transcription of the original digital audio recording of the testimony and proceedings captured in the above-entitled matter. As the transcriptionist, I have reviewed and transcribed the entirety of the original digital audio recording of the proceeding to ensure a verbatim record to the best of my ability.

I further certify that I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand this 29th day of July 2025.

Nancy E. Krakower

Nancy Krakower, Transcriptionist