

October 7, 2025

Brazos Valley Groundwater Conservation District
Board Members
General Manager Alan Day
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Hearne, Texas 77859

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Re: UW Brazos Valley Farm LLC (“UWBVF”) Comments for October 9, 2025 Public Rules Hearing

Dear BVGCD Board Members Jayson Barfknecht, Stephen Cast, Mark Carrabba, John Elliott, Jeff Kennedy, Gary Mechler, Lisa Rolke, and Chris Zeig, and General Manager Alan Day:

UWBVF appreciates the opportunity to provide comments to the Brazos Valley Groundwater Conservation District (the “District”) in advance of the October 9, 2025 public rules hearing. UWBVF supports revisions that incorporate legislative updates and clarify rules for landowners. This comment letter addresses two issues: (1) the proposed revisions regarding “actual” beneficial use (pages 20, 27, 32) and (2) the proposed revisions to District Rule 10.4 regarding hearings for and issuance of export permits.

I. The proposed revisions for “actual” beneficial use are ambiguous and threaten to unreasonably regulate private property rights, as shown by the conflict with Texas’s water planning approach.

Pages 20, 27, and 32 of the proposed revisions insert the concept of “actual” beneficial use without providing any definition or legal basis for that term. The revisions include:

- **Rule 8.4(b)(5):** For all applications submitted to the District, the District proposes to require “a statement of the nature and purpose of the proposed actual use and the amount of water to be used for each purpose and any evidence supporting the authenticity of the intended actual beneficial use, including evidence of legal obligation to provide water to end users, as applicable.”
- **Rule 8.3(c)(4):** When considering whether to grant or deny a permit or amendment, the District proposes to consider whether: “the proposed use of water is dedicated to an actual beneficial use and whether sufficient evidence of an intended actual beneficial use is presented, including evidence of legal obligation to provide water to end users, as applicable;”
- **Rule 7.1(e):** “Production limits on wells will be based on evidence of beneficial use submitted in Operating Permit applications, including evidence of legal obligation to

provide water to end users, as applicable. The District shall verify the actual use of permitted wells by operating a well water level monitoring and well meter verification program at intervals that the District deems appropriate.”

“Actual beneficial use” is not a term that the Texas Legislature has included or defined in Chapter 36 of the Water Code, which sets the bounds of the District’s authority. Likewise, Texas courts have not interpreted “beneficial use” of groundwater to require evidence of “actual” use, such as “evidence of legal obligation to provide water,” as the District proposes. Instead, the Legislature broadly defines “use for a beneficial purpose” as:

- (A) agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
- (B) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
- (C) *any other purpose that is useful and beneficial to the user.*

Tex. Water Code § 36.001(9) (emphasis added); District Rule 1.1(45). The Water Code contemplates “evidence” of use in determining *historic or existing* use—not as a blanket requirement for new groundwater applications or a tool for denying new permits, amendments, or renewal applications. *See* Tex. Water Code § 36.001(29).

At no point has Texas adopted a policy requiring evidence of “proposed actual” or “intended actual” beneficial use for groundwater permit applications. And with good reason—if applied in a constraining way, such an approach could limit the ability to secure long-term water supplies ahead of population growth, forcing communities to operate from hand to mouth for a life-sustaining resource. Texas plans 50 years into the future through 5-year state and regional cycles, anticipating and addressing needs *before* they arise. This concept extends beyond public water supply—irrigators need a sense of available water before making land use and planting decisions; power generators and manufacturers require assurance of water supplies before financing and building. Constraining groundwater development to “actual” use could unreasonably impair opportunities for conjunctive use with other water supplies, like in the instance where a groundwater well serves as backup for surface supplies.

In addition to being contrary to Texas law and policy, the District’s proposed evidentiary requirement to demonstrate “proposed actual” or “intended actual” use is confusing and ambiguous. Presumably, the District intends to regulate even-handedly and apply this new obligation to all permit applications, requiring “sufficient evidence of an intended actual beneficial use” for all landowners, not just those providing public water supply. But what evidence a landowner would need to demonstrate an “*actual* beneficial use” is unclear. The example given, “evidence of legal obligation to provide water to end users, as applicable” muddies this requirement even further. “As applicable” gives little direction and “legal obligation” is open to multiple interpretations.

Because these revisions go beyond recent statutory changes and introduce unreasonably ambiguous constraints on the exercise of private rights without a statutory basis, UWBF respectfully requests that the District remove its proposed revisions to Rules 8.4(b)(5), 8.3(c)(4), and 7.1(e).

II. If proceeding with the “actual use” revisions, the District needs to align the Rules with statutory criteria for renewals.

Additionally, the Texas Water Code makes clear that for permit renewal applications, the District may not re-evaluate initial authorizations or require additional evidence related to “actual” beneficial use. *See* Tex. Water Code §§ 36.113(d) (beneficial-use evaluation “does not apply to the renewal of an operating permit issued under Section 36.1145”); 36.1145 (requiring district to “renew or approve an application to renew an operating permit” if permittee is not delinquent in fees, subject to pending enforcement, or noncompliant with penalties or orders).

Should the District proceed with the “actual” beneficial use revisions, UWBF requests that Rule 8.4(b) make clear that these revisions do not apply to renewal applications:

UWBF suggested alternative revision to Rule 8.4(b):

(b) A permit renewal application shall be submitted in accordance with Rule 8.5(b).
All other ~~An~~-applications shall be in writing and sworn and shall contain . . .

III. The proposed revisions to Rule 10.4 need clarification to align with the District’s statutory authority for periodic reviews of export permits.

The proposed revisions also include the following changes to District Rule 10.4:

- (a) Applications for transport permits are subject to the hearing procedures provided by these Rules in Section 14. Applications and permits for transport permits are subject to the permitting provisions provided by these Rules in Sections 7 and 8.
- (b) In determining whether to issue a permit to transfer groundwater out of the District, the Board shall be fair, impartial, and nondiscriminatory and shall consider the permits [sic] considerations provided by these Rules in Sections 7 and 8, as well as the following factors when deciding whether to issue or impose conditions on a drilling, operating, or transport . . .

These changes propose to incorporate Sections 7 (Production Limitations) and 8 (Registration and Permitting) of the District rules into applications for export permits and the District’s consideration of those permits. Importantly, as currently written, these changes would apply not only to *new*

transport permit applications but also to periodic reviews of *existing* transport permits, because Rule 10.4(e) incorporates Rule 10.4(b).

The District’s authority to periodically review existing export permits is limited by Section 36.122 of the Water Code, which restricts any additional limitation to three statutory factors:

- (1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;
- (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and
- (3) the approved regional water plan and approved district management plan.

Tex. Water Code § 36.122(k) (“a district may periodically review the amount of water that may be transferred under the permit and may limit the amount if additional factors considered in Subsection (f) warrant the limitation, subject to Subsection (c).”). The District lacks authority to impose additional limitations based on “considerations provided by these Rules in Sections 7 and 8,” as the proposed revisions currently, inadvertently incorporate by reference. UWBVF suggests that the District maintain consistency with the Water Code through the following revision to Rule 10.4(e):

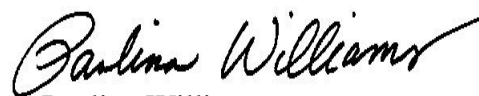
UWBVF suggested revision to Rule 10.4(e):

- (e) The District may periodically review the amount of water that may be transferred under an operating permit to transport water out of the District and may limit the amount if additional factors considered, ~~related to the factors~~ in Subsection (b)(1)–(3), above, warrant the limitation.

IV. Conclusion

UWBVF appreciates the opportunity to submit these comments to the District. Please do not hesitate to reach out with any questions.

Sincerely,



Paulina Williams

On behalf of UWBVF