

# Exhibit J

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.

1 Q. Is it your testimony that the reason you  
2 changed Rule 6.1 related to the permits issued to  
3 Upwell?

4 MR. DE LA FUENTE: Object to form.

5 THE WITNESS: That -- you need to restate  
6 that. It's -- that -- it's not -- it's not the -- let's  
7 see -- if -- if you'd ask the question again.

8 BY MR. JONES:

9 Q. I think I understood you to say, a moment ago,  
10 that in response to this Topic 9, the reason Rule 6.1  
11 was changed back in September 14, 2023, related to, in  
12 some way, the fact that Upwell had purchased Dr. Stiles'  
13 farm and applied for some other permits.

14 A. No, sir. That's not right.

15 Q. What was the reason?

16 A. That was part of the reason. We had many  
17 permits. A landslide of permits that came in from the  
18 Simsboro Aquifer. Our job is to make sure and not  
19 exceed the desired future condition. And the events  
20 beginning in 2021, carrying through 2022 into 2023,  
21 became clear that the landslide of permits that we were  
22 getting under our then-current rule was -- could in the  
23 future affect our ability to follow along our trending  
24 DFC line, our flight path to 262 feet in a very  
25 detrimental way. And it -- it was something that the

1 Board needed to consider and understand what could  
2 happen down the road.

3 Which was one of the reasons that I had James  
4 Beach to begin preparing the documents with each of  
5 those applications, when he would review a  
6 hydrogeological report that was presented from any of  
7 the landowners. And they presented them, but they  
8 didn't have to show what is the effect of this well  
9 and/or wells on the DFC. It was simply done on a single  
10 well basis. How does this pumping affect the aquifer?

11 It didn't show -- we weren't requiring them at  
12 that time to have to show what is the effect on the  
13 desired future conditions. That's where I had James  
14 begin to show that to the Board so they would  
15 understand. And so it -- it's about the protection of  
16 the aquifer and about doing our very best not to exceed  
17 the desired future condition yet allowing for proper  
18 property -- private property rights to be used.

19 Q. So you're saying that in part the reason --  
20 that the thing that triggered a change in the rule in  
21 September 2023, with this landslide of permit  
22 applications?

23 A. That was part of it.

24 Q. You also had --

25 A. We also -- we also had on the ground evidence

ALAN DAY  
FAZZINO INVESTMENTS vs BRAZOS VALLEY

July 16, 2025  
71

1 from the summer of 2022, which was -- rattled the 2011  
2 drought, no rain, and extremely hot temperatures. And  
3 the Simsboro pumps turned on in the bottom. So we had  
4 agricultural pumping, and the pumps weren't being turned  
5 off. We had municipal pumping because people were  
6 watering their yards and doing all the things they do.  
7 We had rural water supply pumping. We had a much higher  
8 than normal Simboro pumping during the summer of 2022.

9 And July the 1st, I had wells in the Simsboro  
10 becoming inoperable, Calvert livestock auction, Monique  
11 -- I mean Monica Otia (phonetic). I can -- I know of  
12 five wells in the first week of July that either had to  
13 be redrilled or pumps burned up and wells had -- and  
14 pumps had to be lowered. So there was something going  
15 on that had never gone on before began to go out to our  
16 monitoring wells that we had -- we had earlier in the  
17 year been to, and now we have a precipitous drop in our  
18 artesian head, and it -- and it is much more than it has  
19 ever been.

20 So now we -- it -- it became apparent that the  
21 effect of the pumping that we now can measure and know  
22 exactly what it was was having a larger effect than --  
23 or at least having a measurable effect and making wells  
24 inoperable and having to be redrilled. So that and the  
25 fact that you -- we -- we knew that there was a

1 transport project coming. We knew those were wells that  
2 were going to turn on, and they were going to -- they  
3 were going to be used.

4 And then the landslide permits came in. The  
5 Board needed to be aware and have the ability to reach  
6 into their toolbox and use a -- a way to protect the  
7 aquifer and to protect us from trying our best not to  
8 exceed a future DFC.

9 Q. So I think you're telling me that there are a  
10 number of documents that you looked at in the time  
11 period of 2021 to 2023, that caused you to believe you  
12 needed to change the rule.

13 A. I've reviewed those.

14 Q. And what documents were they?

15 A. The ones that I've already provided to you  
16 that I've just have gone back and I-- I enumerated many  
17 of those documents to you.

18 Q. Were there any documents indicating the levels  
19 of artesian head in wells that you just referred to?

20 A. That would be in our database based on our  
21 monitoring well information. I did not go back and  
22 review those. They're in my head. I know what that  
23 looked like.

24 Q. But the database contains that information?  
25 The monthly --

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

ALAN DAY  
FAZZINO INVESTMENTS vs BRAZOS VALLEY

July 16, 2025  
201

1 A. Yes.

2 Q. And do you know how many owners that involved?

3 A. I'm not going to say not over -- I think  
4 three.

5 Q. Do you know who they were?

6 A. One would be -- again, I believe this to be  
7 the case, I think, and I can be wrong on this one,  
8 Wickson Special Utility District may have slightly  
9 overlapped two of their footprints on Simsboro wells.  
10 No, not on Simsboro wells, on -- anyway, they may have.  
11 I don't know that one for sure. Wellborn Specially  
12 Utility District did it on two of their wells on a  
13 property. Charles Fazzino did it on one of his  
14 properties recently.

15 Q. Wellborn, so that would be Stephen Cast?

16 A. That's --

17 MR. DE LA FUENTE: Object to form.

18 THE WITNESS: Ask -- just ask the question  
19 again, if you don't mind.

20 BY MR. JONES:

21 Q. Okay. Stephen Cast is associated with what  
22 Wellborn's done?

23 A. Yes.

24 Q. I'm going to hand you Exhibit 21.

25 (Plaintiffs' Exhibit 21 was marked for

1 identification.)

2 BY MR. JONES:

3 Q. And ask if you recognize that document? Do  
4 you recognize the document?

5 A. Yes. Absolutely.

6 Q. What is it?

7 A. It is a document that I created. This was  
8 likely presented during a Board meeting and followed a  
9 -- the Rules Committee meeting we had on March 22nd as a  
10 follow-up of how we could go about what other  
11 groundwater Districts that have changed their spacing  
12 rules, how they've gone about doing it.

13 Q. So we see in Exhibit 20, this topic about  
14 permitting of wells.

15 A. Yes.

16 Q. And that's the meeting that's referred to in  
17 Exhibit 21 at the top, during the Rules Committee  
18 meeting held March 22, 2023, correct?

19 A. That's correct, yes.

20 Q. And then in the best of -- of passive voice,  
21 it says there was a request made --

22 A. Yes.

23 Q. -- to survey the method. Who made that  
24 request?

25 A. I would not. Someone on the committee, or a

ALAN DAY  
FAZZINO INVESTMENTS vs BRAZOS VALLEY

July 16, 2025  
203

1 Board member that was there because when they have an  
2 open meeting, it can be the Rules Committee members and  
3 any of the other Board members. So we've posted it for  
4 an open meeting, so if the Board members want to come,  
5 they can. They're allowed to talk. So I -- I don't  
6 know the answer to that.

7 Q. Is it your recollection that a Board member  
8 made the request?

9 A. A Board member would have made the request  
10 because if it were the public I'm not going to just go  
11 do it because the public says. I'm going to be directed  
12 by a Board member or a Rules Committee member.

13 Q. So if somebody on the Rules Committee or  
14 somebody who was a member of the Board of Directors  
15 asked you to survey other Districts?

16 A. Yes, that is correct.

17 Q. And according to the memo, they ask you to  
18 survey other Districts, what methods they used to slow  
19 down the amount of groundwater being permitted?

20 A. That is correct.

21 Q. In -- in those words?

22 A. I -- I can't say that's exactly, but that was  
23 the essence of it.

24 Q. That's why you wrote it that way?

25 A. That is correct.

ALAN DAY  
FAZZINO INVESTMENTS vs BRAZOS VALLEY

July 16, 2025  
268

1 Q. The people in the second bucket are going to  
2 have to have four times as much contiguous property to  
3 support the same production as those in the first  
4 bucket?

5 MR. DE LA FUENTE: Object to form.

6 THE WITNESS: Yes, sir.

7 BY MR. ANDERSON:

8 Q. And four times as much contiguous property is  
9 not the same as one times as much, right?

10 MR. DE LA FUENTE: Object to form.

11 THE WITNESS: No, sir. It's not.

12 BY MR. JONES:

13 Q. All right. And by the way, the aquifer is not  
14 divided into these buckets, is it?

15 A. No, sir. But it needs someone to manage it.

16 Q. And --

17 A. And that's why my eight guys, my Board  
18 members, are tasked with managing that aquifer.

19 Q. And what they chose to do to manage it is  
20 treat it like it has little buckets that are discrete --

21 MR. DE LA FUENTE: Object to form.

22 BY MR. JONES:

23 Q. -- from each other.

24 MR. DE LA FUENTE: Object to form.

25 THE WITNESS: I disagree with that.

ALAN DAY  
FAZZINO INVESTMENTS vs BRAZOS VALLEY

July 16, 2025  
269

1 BY MR. JONES:

2 Q. How do you disagree with that?

3 MR. DE LA FUENTE: Object to form.

4 THE WITNESS: They chose to manage it to make  
5 sure that at some point they don't -- they do their very  
6 best not to exceed the DFC. A regulatory number that  
7 they're charged with doing, and also to do their very  
8 best not to get to a curtailment, which affects  
9 everyone's property rights.

10 BY MR. JONES:

11 Q. The people in -- in the new permit bucket, the  
12 after September 14, 2023, bucket, who have to have four  
13 times as much contiguous property as their neighbors,  
14 are not, in your book, being treated anything other than  
15 just regulatory oversight?

16 MR. DE LA FUENTE: Object to form.

17 THE WITNESS: Everyone is under regulatory  
18 oversight.

19 BY MR. JONES:

20 Q. These got --

21 A. Bucket one and bucket two both have regulatory  
22 oversight.

23 Q. Different regulatory oversight?

24 MR. DE LA FUENTE: Object to form.

25 THE WITNESS: Only that they chose to get