

LAW OFFICES OF
McCARTHY & MCCARTHY, L.L.P.

1122 COLORADO STREET, SUITE 2399
AUSTIN, TEXAS 78701
(512) 904-2310
(512) 692-2826 (FAX)

July 15, 2026

Board of Directors
Brazos Valley Groundwater Conservation District
c/o Alan Day, General Manager
112 W 3rd St
Hearne, Texas 77859

**Via E-mail &
Hand Delivery**

Re: Proposed Brazos Valley Groundwater Conservation District Rule Amendments to be considered July 15, 2026

Dear Mr. Day:

On behalf of clients of the Firm, we have been reviewing and discussing with hydrogeologic experts the District's latest draft of proposed rule changes. We appreciate the opportunity to provide these comments for the Board's consideration.

A copy of our comments on specific rule amendments is attached hereto as **Appendix "A."** We also want to take this opportunity to provide general comments that address the voluminous rule changes proposed by the District.

Our clients continue to appreciate the District's efforts to manage production of groundwater from the aquifers subject to its jurisdiction to address scientifically supported concerns related to permitting and the current climatic conditions. Some of the proposed changes to the District's Rules, however, exceed the limited authority granted to the District by Chapter 36, Texas Water Code, and its enabling legislation in Chapter 8849, Texas Special District Local Laws Code. Accordingly, they are objectionable, and legally problematic because they impose undue restrictions and extreme burdens on the right of a landowner to beneficially use their groundwater and, thereby, their overall enjoyment of their land, as well as representing a vast overreach of the District's powers and authority.

The District is a creature of statute. It is a member of the "executive department" of state government perched in the hierarchy of "bodies politic" just below counties in terms of the level of control and regulatory powers they wield. As Texas Courts and the Texas Attorney General have held repeatedly, special purpose districts like BVGCD have only those powers expressly granted by the Legislature, or necessarily implied. *E.g., Tri-City Freshwater Supply District No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940); *South Plains Lamesa Railroad v. High Plains UWD No. 1*, 52 S.W.3d 770, 776 (Tex. App.-Amarillo 2001, no pet.); *see* Tx Atty. Gen. Op. KP-0247.

Even if the District were able successfully to characterize the discriminatory restrictions, undue burdens, and resultant takings as being for a legitimate public purpose, to be a lawful

July 15, 2026

Page 2

exercise of the District's police powers, the "taking" would require the District's payment of "just compensation" to avoid a violation of Article I, Section 17 of the Texas Constitution. *See Barshop v. Medina County Underground Water Conservation District*, S.W.2d 618, 628, 631 (Tex. 1996) ("State still can take the property for a public use as long as adequate compensation is provided").

Additionally, a more nuanced aspect of the rulemaking processes the BVGCD is undertaking currently is the fact that the applicability of the proposed rules, if and when adopted, must be limited in the manner in which the rule(s) affect existing permits. Specifically, rulemaking must be prospective in nature. Newly adopted rules must only affect applications, rulings, etc. which are filed, or come after the rules are adopted. As drafted, several of the proposed rule changes are inappropriately retroactive and will affect existing permits and applications, which have already been filed at the District and, in some instances, acted upon. At a minimum, the rules should be clearly drafted in a manner which confirm they will only be "future facing," and will not retroactively impact existing permits and applications filed and in process at the District.

Finally, as drafted, these proposed rules introduce considerable vague discretionary decisions for the Board to make. Without firmer guardrails, as drafted, these proposed rules appear to create an environment for arbitrary and capricious application of the rules which will result in highly discriminatory results.

Many of the concerns raised relate back to concerns our firm has raised with the District over the years during prior rule change procedures. Not only do we re-urge and affirm our prior comments, we believe the issues raised with this round of proposed rules highlight the validity of our prior concerns and show how the proposed changes will exacerbate the problems introduced with prior rule changes.

Thank you for your consideration of the recommendations on this matter.

Sincerely,

McCarthy & McCarthy, LLP

Edmond R. McCarthy, Jr.

ERM/tn

Encl.

APPENDIX A

McCarthy & McCarthy, LLP's comments on Brazos Valley Groundwater
Conservation District Proposed Rules set for hearing July 15, 2026

RULE SPECIFIC COMMENTS TO DRAFT RULES POSTED ON WEBSITE ON 6/19/26

Rule 1.1(43): Definitions of Terms: “Transport”

Because the District is making changes to this definition, it would be important for the District to clarify with an addition to this definition that Transport should mean “transferring, exporting, or moving groundwater **FOR END USE** outside the District’s boundaries.” As drafted, there exists a possibility wherein a gathering line or pipeline system could have water that is produced within the District’s boundaries for end use within the District’s boundaries, that may briefly travel outside the District due to pipeline routing which happens to cross outside of and then back into the District, or where mid-process facilities such as a treatment plant could be located outside of the District. If the end use of the water is within the District, there should be no designation of transport or any of the associated requirements, because the water was not exported for end use outside of the District.

Rule 7.2: Actions Based on Aquifer Response to Pumping

- **Proposed 7.2(d)(1)(B):** The proposed requirement of one monitor well per 800 ac/ft of groundwater permitted is an extremely burdensome financial requirement to put on all permittees in and of itself. This mandatory provision ignores the District’s extensive existing monitor well network, which begs the question of whether a monitor well would even be needed or useful in specific scenarios. The District has offered no scientific or legal basis for the requirement of one monitor well per 800 ac/ft. This provision also shifts the District’s burden to develop science onto Permittees and Applicants in an overly burdensome way. In addition to the fact that the Legislature directed the management of groundwater to groundwater districts, the legislature made clear that the fulfillment of the District’s duties was to be accomplished using the “best available science” which is unambiguously defined subsection (b) of Texas Water Code §36.0015 as follows:

“conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.”

Texas Water Code §36.0015(a)(emphasis added). The District has presented no science, much less the “best available science” to support or justify the onerous condition to access their groundwater proposed to be imposed upon landowners of constructing a monitor well that could cost anywhere from \$100,000.00 to a \$1,000,000, or more, depending upon the depth of the well, how it is required to be equipped, and the geologic formations that must be drilled through to complete the well. That substantial negative impact on Landowners, and others who hold the constitutionally protected property right in the groundwater underlying the land, is in addition to the tiresome and expensive process of regulatory obstacles they already have to go through to obtain permits from GCDs like the District to enjoy their property. They are also required to pay substantial fees to the District for the privilege of using and enjoying their own property. Those production fees, which

last year jumped substantially because 100% of the District's litigation costs were imposed upon them, are charged by the District so that the District may use those fees for "any lawful purpose." *See* Texas Water Code §36.205(c). Those fees, and transport or export fees should be used to fund projects like the construction of monitoring wells.

Specifically, the Water Code provides that the District may use fees from both production and export fees for conducting aquifer monitoring. *See* Texas Water Code §36.207. To not only be subject to the District's exorbitant fee structure, but now be required to drill one monitor well per 800 ac/ft, with monitor wells costing potentially hundreds of thousands of dollars, the District is not only forcing landowners to pay twice to use their own private property, the District is passing on its responsibility and forcing the users to pay for monitoring that the District should be paying for with the fees already collected. This is an extreme and undue cost burden to applicants, permittees, and landowners. Moreover, it is an unwarranted cost that will likely prevent some landowners from being able to acquire a permit because they cannot afford to drill a monitoring well(s) required by this rule.

The rule could have a negative impact on the land values in the District. There are a multitude of negative economic ramifications that would flow from such an impact, including a potentially significant reduction in the ad valorem tax base and resulting revenues to the governmental entities and school districts within Brazos and Robertson Counties.

Even worse, as drafted, this change would add a requirement for transport permit applications, which means existing production permittees could be forced to pay to install monitor wells solely because they applied for transport, transport which has no impact to the aquifer. This of course would be in addition to the transport fees, which are already considerably high and can (and based on the District's actions and statements clearly will) raise every year in perpetuity. Again, all of these costs being piled upon landowners for having the gall to want to use their own private property.

Finally, there is a statement that "the number of monitoring wells required to be installed and operational may be adjusted by the Board, as determined to be reasonable." Having this permissive statement shortly after the mandatory requirement of one well per 800 ac/ft is conflicting and confusing.

If the idea is that the District will require LESS than one well per 800 ac/ft, the mandatory statement at the top of the rule should be changed. If the idea is to allow the District to require even more than one well per 800 ac/ft, this is not only too vague to put landowners on notice of potential costs, it has even less of a scientific or legal basis for such a requirement or decision, and reflects an arbitrary and capricious mandate that discriminates between different landowners and projects based on the various whims of the Board. This type of discriminatory rulemaking, particularly where it is not supported by any science, much less the "best available science," are required by the Legislature in Section 36.0015, Texas Water Code, has no place where it is clearing causing a negative

impact on landowners constitutionally protected property rights in their groundwater.

- **Proposed 7.2(d)(1)(H):** There are several concerns with this proposed rule change, which will be repeated concerns for any of the proposed rule changes related to this new DFC Curtailment Category 3. First, this is an inappropriate *ex post facto* rulemaking due to its undeniable retroactive application set in the proposed Rule as “June 1, 2026,” proposed after the passage of that date without any notice and, more importantly, with out any legislative authority. As Texas Courts and the Texas Attorney General have held repeatedly, special purpose districts like BVGCD have only those powers expressly granted by the Legislature, or necessarily implied. *E.g., Tri-City Freshwater Supply District No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940); *South Plains Lamesa Railroad v. High Plains UWD No. 1*, 52 S.W.3d 770, 776 (Tex. App.-Amarillo 2001, no pet.); *see* Tx Atty. Gen. Op. KP-0247. There is no reason to enact retroactive rulemaking, especially when the District enacted an illegal and inappropriate moratorium without proper notice in violation of the Texas Open Meetings Act. *See* Tex. Gov’t Code §551.041.¹

Further, proposed curtailment process reflects a blatantly discriminatory process, To the extent that curtailments that should be implemented, they should be imposed for a defined temporary period of time, and should be imposed across the board in an even-handed, non-discriminatory manner District-wide. Again, the District must consider the fact that the need for the curtailment, assuming it is supported by the “best available science,” is necessitated my more that just the pumping of the most recently granted permits. Other factors such as drought or insufficient rainfall and older production have all contributed to the drawdown which is impacting the potential DFC issues. Accordingly, all permittee should be held accountable for the impacts to the DFCs under the District’s rules. The District should not discriminate based upon permit age or timing. All production should share the same “haircut” for temporary curtailments.

- **Proposed 7.2(d)(3)(G):** The proposed language in 7.2(d)(3)(G)(ii) that the District shall “preserve to greatest extent possible historic uses and non-historic existing uses that were permitted by the District before June 1, 2026” is blatantly discriminatory and not supported by clear or express legislative mandate. As Texas Courts and the Texas Attorney General have held repeatedly, special purpose districts like BVGCD have only those powers expressly granted by the Legislature, or necessarily implied. *E.g., Tri-City Freshwater Supply District No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940); *South Plains Lamesa Railroad v. High Plains UWD No. 1*, 52 S.W.3d 770, 776 (Tex. App.-Amarillo 2001, no pet.); *see* Tx Atty. Gen. Op. KP-0247. While the Water Code may make exceptions to allow discrimination in favor of production denoted as historic and existing use, the artificial (and inappropriately retroactive) cutoff of June 1, 2026, to create a caste system of permits is blatant discrimination. The only time the legislature has authorized a cutoff or limitation

¹ Attached hereto as **Appendix “B”** is a copy of this Firm’s Letter dated July 9, 2026, providing notice to the Board of the erroneous actions associated with the improper posting and conduct of its meetings on June 11, 2026, and July 9, 2026, regarding the inadequate notice of and illegal action in adopting and, thereafter, extending a moratorium on the acceptance and processing of permit and permit amendment applications.

of the access to a landowners constitutionally protected property right in their groundwater was in the Edwards Aquifer Act. That action, which remains constitutionally suspect, was a clear an express mandate, not one arbitrarily selected by the Authority (or in this instance the BVGCD Board), and was believed to be necessitated to protect at least five endangered species protected by federal law. None of those factors are in play in this rulemaking.

The proposed language in 7.2(d)(3)(G)(iii) not only continues this wholly inappropriate discrimination, it is so vague and undefined to the point of being useless. For Historic Permits, the proposed rule states that they will either “not be curtailed or curtailed at a lesser pro rata share.” This type of vague language, “maybe we curtail you maybe we don’t” is too vague to constitute a rule. There is no definition as to how that decision will be made, if it will always be made the same, or what criteria will go into the decision. This is pure discretion which will undoubtedly lead to discrimination. Similarly, the proposal that non-historic permits issued prior to June 1, 2026, in addition to the inappropriate discrimination with no basis in law, science, or fact, as well as the inappropriate retroactive rulemaking, is just as vague and useless. To say this Category 2 will get curtailed somehow, with the only idea of what that curtailment will be is more than Category 1 but less than Category 3, is completely meaningless. All of these same concerns exist in even higher regard for the new, wholly inappropriate, Category 3 for permits granted post-June 1, 2026. None of these provisions give permittees any idea what potential curtailments they could be subject to.

There is no way for a permittee to know how long the curtailments may last, what causes them to end, or how the curtailment amounts will be determined. This entire scheme is discriminatory, and vague, and does not give landowners the notice it should.

Finally, subsection 7.2(d)(3)(G)(iv) continues to raise an issue our firm has warned the District about in the past. This section states that rather than a reduction from the authorized permit production volume, curtailments will be based upon “*actual production amounts and will be based on the maximum production from a well...that has been put to beneficial use in any permitted year.*”

Keeping in mind that fact the District charges permittees production fees based upon their the authorized permit production volume, *i.e.*, their “paper rights,” not the volume they actually produce, this proposed artificial baseline means a permittee who has been involved in conservation gets “double punished” for not using their full allotment. The pay for 100% authorized use, then get curtailed for not using 100% of that authorized use.

Based upon the proposed curtailment scheme, it is to the permittees detriment to use a single ounce lower than its full production allocation because the curtailment, which as noted above is not even specifically drafted or decided and will seemingly be made up based on the Board’s current whims, will not only cut back your allocated “paper right” amount you paid production fees on that year, but require a full surrender of anything below max production that you conserved and did not pump, and, possibly, then some. This is a

wholly inappropriate and overly burdensome proposition, which actively discourages conservation. The proposed rule amendment should not be adopted as it violates the constitutional mandate in Article XVI, §59, as well as the plain language of §36.0015(a), Texas Water Code, to preserve and conserve the resource as well as promote its development and beneficial use.

Rule 8.34: Permitting of Non-Exempt Wells

- **Rule 8.3(k):** As noted above, the concept of requiring any new permit applications, or amendment application, to install one monitor well for every 800 ac/ft or permitted groundwater is an overly burdensome financial impact to place on permittees. Further, this section also includes contradictory language after the mandatory amount of one well per 800 ac/ft by saying the Board may adjust the number of wells required. As noted above not only is the mandatory requirement unnecessary, it has no basis in science, fact, or law, and opens the door for discriminatory use. It has not been authorized by the Texas Legislature and is not supported by the best available science. The proposed rule violates the legislative intent in Section 36.002 of the Water Code, is an *ultra vires* act, and if adopted violates not only Article I, §17 of the Constitution as damaging landowners property rights by denying them access to the mandatory permit for a non-exempt beneficial use of their groundwater, it denies them due process under Article I, §19, as well as no due fair compensation for the harm they suffer. All prior comments regarding issues related to the one well per 800 ac/ft permitted apply to this section as well.

Rule 10.2: Applicability

- **Rule 10.2(a):** Requiring a transport permit amendment for **ANY** change is gratuitous, unnecessary, and overly burdensome. As drafted, this would require a full amendment process for lessening of an amount authorized, or even to correct a clerical error in a permit. It does not make sense for an amendment for **ANY** change, no matter how small, to require the full amendment process.
- **Rule 10.2(c):** While there is not an issue with the automatic granting of an Existing Transport Permit, the provision in 10.2(c)(3) which states that an Existing Transport Permit may not be transferred is unfair as drafted. If the intent is not to allow a permit holder to “flip” that permit to a third-party that does not agree to abide by the permit terms, that’s one thing. To universally block all transfers as drafter, blocks a landowners ability to “alienate, *i.e.*, sell property, or even transfer property to their heirs without added complication. This is clearly unconstitutional, and surely not what the Board intends. A mere change of ownership in and of itself should not require a full permit amendment process. This is an unnecessary burden and a waste of both landowners’ and the District’s resources and time.
- **Rule 10.2(c)(5)** allows until February 1, 2027, for someone to request this Existing Temporary Permit. This date, which seemingly has no basis in law, science, or fact, highlights the issues, concerns, is discriminatory nature similar to the date of “prior June 1, 2026” as a cutoffs that is discussed at length in prior comments. Moreover, the Legislature has not authorized such action. As Texas Courts and the Texas Attorney General have held repeatedly, special purpose districts like BVGCD have only those powers expressly granted by the Legislature, or necessarily implied. *E.g.*, *Tri-City Freshwater Supply District No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940); *South Plains Lamesa*

Railroad v. High Plains UWD No. 1, 52 S.W.3d 770, 776 (Tex. App.-Amarillo 2001, no pet.); see Tx Atty. Gen. Op. KP-0247.

Rule 10.4: Hearing and Permit Issuance

- **Rule 10.4.(d)(4):** As previously noted in these comments, the statement that “(t)he number of monitoring wells required to be installed and operational may be adjusted by the Board, as determined to be reasonable” conflicts with the mandatory requirement proposed of one well per 800 ac/ft, and as noted above, both show the mandatory requirement is unnecessary and has no basis in science, fact, or law, and opens the door for discriminatory use. All prior comments regarding issues related to the one well per 800 ac/ft permitted apply to this section as well.
- **Rule 10.4(g):** This creates an ability for the District to make up rules as they go “if it would better serve the public interest.” This determination is too vague & uncertain, ripe for discrimination, and gives no fair notice to landowners of their rights and when they may or may not be subject to a lengthy and expensive public hearing process. This type of discretionary application is ripe for claims of discrimination and are not appropriate for the District to include in its rules. Moreover, the Legislature has not authorized the practice. To the contrary, the Legislature has mandated processes for rulemaking in Chapter 36, Texas Water Code. *E.g.*, Texas Water Code §§36.101-36.1011. As Texas Courts and the Texas Attorney General have held repeatedly, special purpose districts like BVGCD have only those powers expressly granted by the Legislature, or necessarily implied. *E.g.*, *Tri-City Freshwater Supply District No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940); *South Plains Lamesa Railroad v. High Plains UWD No. 1*, 52 S.W.3d 770, 776 (Tex. App.-Amarillo 2001, no pet.); see Tx Atty. Gen. Op. KP-0247.

APPENDIX B

McCarthy & McCarthy, LLP's July 9, 2026, Letter to the Board

LAW OFFICES OF
McCARTHY & MCCARTHY, L.L.P.

1122 COLORADO STREET, SUITE 2399
AUSTIN, TEXAS 78701
(512) 904-2310
(512) 692-2826 (FAX)

July 9, 2026

Board of Directors
c/o Alan Day, General Manager
Brazos Valley Groundwater Conservation District
112 West 3rd Street
Hearne, Texas 77859

via E-mail

Re: Board Actions related to Improper Open Meetings Postings and Adoption of
Moratorium Negatively Impacting Private Property Rights

Dear President Barfknecht and Board Members:

I am writing to you on behalf of landowner clients located within the District whose property rights are being negatively impacted by recent actions of the Board that are contrary both to the Texas Open Meetings Act and their constitutionally protected private property rights. Specifically, the Board's actions on June 11th, and proposed action today, July 9th, assuming they were legal, were *not* properly posted under the requirements of the Texas Open Meetings Act as discussed below. Moreover, the Board's action on June 11th to adopt a moratorium on permit applications, and the extension of said moratorium that impacts the landowners' ability to apply for and secure the statutorily mandated permits specified in Section 36.113, Texas Water Code, necessary to exercise and enjoy their constitutionally protected groundwater rights, is an *ultra vires* action in excess of the powers granted to the District by the Texas Legislature, as well as a "taking" of their private property rights as discussed below.

A. Open Meetings Issues:

Matters related to groundwater rights and permitting and limitations upon the exercise of those rights, rights which are constitutionally protected property rights, warrant a higher degree of specificity in an open meetings posting than generic simple references to rulemaking, DFCs and similar topics. In particular, notice of a plan to consider and take action on the adoption of an order imposing a prohibition or moratorium on the acceptance and processing of the statutorily mandated permits necessary to exercise those property rights is required. The District's June 11, 2026, and July 9, 2026 Board Agendas fail to provide adequate notice to achieve compliance with Section 551.041 of the Open Meetings Act (Tex. Gov't Code). *See generally*, Attorney General, *2026 Open Meetings Handbook*, at 30-47.

1. June 11, 2025 Board Meeting and Agenda.

Attached as **Appendix “A”** is a copy of the Board’s June 11th Agenda. Among the Board’s actions was the adoption of a moratorium that prohibited the District from accepting or processing any applications for new permits or amendments to permits between the date of that moratorium and July 9, 2026. A copy of the Resolution Order is attached hereto as **Appendix “B.”**

As evidenced by the plain language of the attached June 11th Agenda, and specifically Item Nos. 4 and 5, there is nothing in that Agenda that appraises the members of the public of the Board’s intent to consider, much less act upon, the adoption of an “Order” that imposes a “moratorium” that prohibits them from exercising their constitutionally protected property rights in their groundwater, *i.e.*, filing applications for the Permits mandated by Section 36.113, Texas Water Code and BVGCD’s Rules. As you are well aware from the multiple news articles and reports, issues related to groundwater are paramount in the minds of Texas landowners, whether those groundwater rights are associated with Data Centers, large Export Projects or simply a large use within the District, are of major interest to the Community.

The purpose of the Texas Open Meetings Act, and the requirements for posting transparent and informative agendas, is one of notice to provide “transparency.” Specifically, what are often referred to as “Sunshine Laws” are intended to facilitate the public’s ability to participate in its government, including the ability to know what their government is doing. Nothing in the attached June 11th Agenda suggests even the possibility of the action the Board took with respect to the adoption of a moratorium.

By e-mail correspondence between myself and the District’s General Manager, between June 26, 2026 and June 28, 2026, I inquired about the existence of any supplemental postings or other notice to the public of the Board’s plan to consider and take action on a moratorium at the June 11th meeting. Copies of my e-mails and Mr. Day’s responses are attached hereto as **Appendix “C.”** As you will see in the response from Mr. Day, he believes that Agenda Items 4 and 5 of the June 11th Agenda were the items that gave the public notice of the plan to discuss, consider and take action on the adoption of the moratorium. For your convenience, I am quoting those sections here:

4. **Executive Session:**

- **Texas Government Code 551.071 - To receive attorney-client privileged information regarding:**
 - **pending lawsuit Fazzino Investments, LP v. Brazos Valley Groundwater Conservation District, CASE NO. 6:25-cv-00001, filed in the United States District Court for the Western District of Texas, Waco Division;**
 - **establishing Desired Future Conditions for all aquifers within the boundaries of the BVGCD and related statutory considerations and associated rules**

- **GMA-wide well mitigation under interlocal agreements**
- 5. Discussion and possible action on items listed and deliberated in Executive Session, as noticed above in Agenda Item 4.**
- **Fazzino Investments, LP v. BVGCD**
 - **Matters related to the adoption of Desired Future Conditions and statutory considerations and associated rules**
 - **GMA-wide well mitigation under interlocal agreement**

As you can see, the plain reading of those Agenda Items provides absolutely no reference to a moratorium, nor do they provide the reader any insight or notice of the District's planned actions. Moreover, those agenda items mirror items in the Board's Agendas for May 21st and April 9th such that to the reasonably prudent person they appear to be "standing" items, almost "boilerplate," *i.e.*, nothing special in character. See **Appendix "D"** (copy of May 21st Board Agenda") and **Appendix "E"** (copy of April 9th Board Agenda). Given the significance of that action, *i.e.*, imposing a moratorium on applications causing a taking of the ability to exercise one's constitutionally protected property rights, the intent of the Texas Open Meetings Act mandates that the District properly notice such an intent. Accordingly, all actions by the District related to the moratorium and the adoption on June 11th of the original moratorium were *ultra vires*, illegal, and are voidable.

The use of general umbrella-like terms quoted above as an attempt to cover-up the true intent and actions of the Board, *i.e.*, use of references to "rulemaking" are inadequate to provide the public with notice of the action of a moratorium. This is particularly when the moratorium was *not* done as a "rulemaking," and the referenced agenda items appear to be a carryover from previous meetings.

Assuming that the moratorium was done as a rulemaking, it would have required that the District provide notice to the public of that proposed rule at least 20 days prior to a hearing on that rule, as well as making a copy of the rule available. Texas Water Code § 36.101. Additionally, Section 36.101 would have required that the District provide notice by e-mail to all persons on the District's list for such purposes.

As a person on the District's hearing notice list, who regularly receives e-mails from the District regarding hearings on permits and rulemakings, I was *not* provided with any such e-mail notice regarding a June 11th rulemaking for the moratorium or the planned rulemaking activities contemplated by the June 11th Agenda. See **Appendix "C"** (e-mail of Alan Day dated June 27, 2026).

The Board Members owe a duty to their landowners and constituents within the District to provide them adequate notice. To date, the Board has failed and has acted *ultra viresly* by taking actions in excess of its lawfully authorized authority.

2. July 9, 2026 Agenda.

For reference I have attached a copy of today's Agenda as **Appendix "F."** Again, similar to the June 11th Agenda, it is vague. On this Agenda, Item 1., the District describes plans to amend an a nonspecific "Board Order" regarding a hearing on proposed rules and acceptance of applications.

1. Discussion and possible action to amend Board Order regarding public hearing on proposed rules and acceptance of new permit/permit amendment applications to July 15, 2026.

There is no mention of any "moratorium" being extended, nor even any specific details to identify which Board Order is being adopted. Specifically, there is nothing in the agenda item to give the public notice that the Order creating the moratorium adopted at the June 11th Meeting, which on its face expires today is being extended to July 15th. Accordingly, any member of the public which may have learned about the Moratorium unlawfully adopted June 11th reasonably would think or believe that the Moratorium still expires today after viewing today's Board Agenda Item 1.

The following court opinions support the conclusion that the Board's agenda postings do *not* support any consideration or action related to the adoption of the referenced "Board Order" imposing the moratorium. *See, e.g.*, [t]he Agenda must provide full and adequate notice of the matters to be considered, particularly where the matter is one of high interest within the community. *See, e.g., Cox Enterprises, Inc. v. Board of Trustees*, 706 S.W.2d 956, 958-959 (Tex. 1986); *Webb County v. Mares*, 726 S.W.3d 902, 908-910 (Tex. App. – Houston [14th] 2025, pet. denied); *Mayes v De Leon*, 922 S.W.2d 200, 203 (Tex. App. – Eastland 1996, writ denied). The District's posted agendas provided no perceptible notice a moratorium, *i.e.*, a prohibition on the acceptance and processing of an application for a statutorily required permit or permit amendment.

B. The Board Has No Authority to Adopt/Impose a Moratorium on Permitting:

In 1917 Texans approved the passage of the so-called "Conservation Amendment" adding Article XVI, Section 59 to the Texas Constitution. That amendment, according to the Texas Supreme Court, gave the Texas Legislature the authority to pass laws related to the construction, development and preservation of Texas natural resources. *City of Corpus Christi v. City of Pleasanton*, 276 S.W.2d 798, 803 (Tex. 1955). That power included the creation of special purpose districts like BVGCD. Texas Water Code §36.0015. When created, however, Texas law is clear that a "district has only such powers and authority as 'may be conferred by law,'" and that "the power of [such a] district is limited by the terms of applicable statutes authorizing its creation and a district can exercise no authority that the Legislature has not clearly granted." *South Plains Lamesa Railroad, Ltd. v. High Plains Underground Water Conserv. Dist. No. 1*, 52 S.W.3d 770, 776 (Tex. App.–Austin 2001, no pet.) (*citing* TEX. CONST. Art. XVI, § 59(b)); *Guitar Holding Co. v. Hudspeth Cnty Underground Water Conserv. Dist. No. 1*, 263 S.W.3d 910, 917-18 (Tex. 2008) (holding that the rules of a groundwater conservation district exceeded the district's statutory authority); *see e.g., Tri-City Freshwater Supply District No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940); Tx Atty. Gen. Op. KP-0247.

Nothing in Chapter 36 of the Water Code, or the District's enabling legislation authorizes the adoption and imposition of a moratorium on permitting. Accordingly, the Directors' action adopting the Order imposing the Moratorium was an *ultra vires* action. See Texas Water Code Chapter 36; Texas Special District Local Laws Code Chapter 8835.

The Board's *ultra vires* actions constitute a "taking" of groundwater owners' property in violation of Article I, Sections 17 and 19 of the Texas Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Those actions also deprive groundwater owners of their civil rights, giving rise to damages under Sections 1983 and 1988 of Title 42 of the United States Code.

C. Recommendation:

In light of the recent erroneous and ill-advised actions by the Board, the following recommendations are offered:

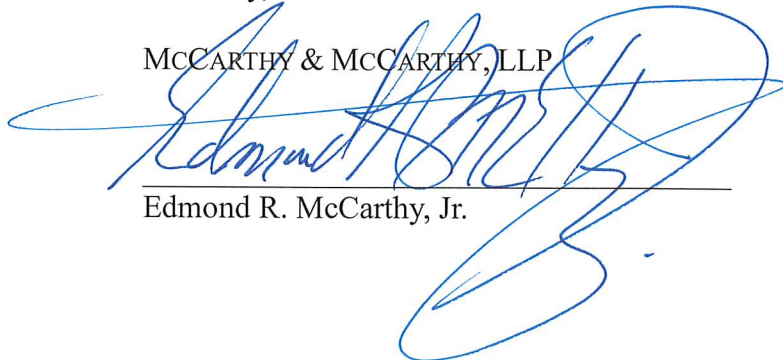
- (i) Table Agenda Item 1;
- (ii) Announce plans to reschedule the July 15th rulemaking hearing for a later date at least 20-days out; and
- (iii) Announce that the Board Order imposing the moratorium on permit applications is of no force and effect and is rescinded and will not be honored or enforced.

Thank you for your prompt attention to these matters of grave concern and the consequences they have on the private property rights of the constituents, particularly the groundwater owners within the District.

Best wishes.

Sincerely,

MCCARTHY & MCCARTHY, LLP



Edmond R. McCarthy, Jr.

ERM/tn
Encl.

Appendix “A”

Copy of the Board’s June 11th Agenda



Agenda

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT
Regular Board Meeting
District Office
112 W. 3rd Street – Hearne, Texas
Thursday, June 11, 2026 – 2:00 p.m.**

Notice is given that the Board of Directors of the Brazos Valley Groundwater Conservation District will hold a Regular Board Meeting on Thursday, June 11, 2026 @ 2:00 p.m. in the District Office.

Call meeting to order

Pledge of Allegiance

Declare quorum present

Public Comment

- a) Non-agenda items
- b) Agenda items

1. Discussion and possible action on the minutes of May 21, 2026, Regular Board Meeting
2. Financial Report – May 2026
3. Review, discussion, and possible action on the readoption of the District Investment Policy.
4. Executive Session:
 - Texas Government Code 551.071 – To receive attorney-client privileged information regarding:
 - o pending lawsuit Fazzino Investments, LP v. Brazos Valley Groundwater Conservation District, CASE NO. 6:25-cv-00001, filed in the United States District Court for the Western District of Texas, Waco Division;
 - o establishing Desired Future Conditions for all aquifers within the boundaries of the BVGCD and related statutory considerations and associated rules
 - o GMA-wide well mitigation under interlocal agreements
5. Discussion and possible action on items listed and deliberated in Executive Session, as noticed above in Agenda Item 4.
 - Fazzino Investments, LP v. BVGCD
 - Matters related to the adoption of Desired Future Conditions and statutory considerations and associated rules
 - GMA-wide well mitigation under interlocal agreement
6. General Manager's Report
 - a) Drought Monitor Report
 - b) Wells permitted pursuant to District Rule 8.3(j)(1)
 - c) Update of Upcoming Permits yet to be drilled
 - d) District Business & Activities

e) Management Plan Update

7. Discussion and possible future agenda items.

8. Adjourn

Signed this 5th day of June 2026



Alan M. Day, General Manager

The Board of Directors may meet in closed session, pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071-551.076, to:

- (1) consult with attorney;
- (2) deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (3) deliberate a negotiated contract for a prospective gift or donation to the District if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (4) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a Board member or District employee;
- (5) to receive information from employees or question employees, but not deliberate public business or agency policy that affects public business; and
- (6) to deliberate the deployment or specific occasions for implementation of security personnel or devices.

The Board may also meet in open session on these matters as required by the Texas Open Meetings Act, Texas Government Code § 551.102.

Agenda items may be taken out of order at the discretion of the Board Chairman

Appendix “B”

Copy of the Resolution Order



**AN ORDER OF THE
BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT'S
REGARDING PROPOSED RULES**

WHEREAS, the Brazos Valley Groundwater Conservation District ("District") is charged by the Texas Legislature with providing for the conservation, preservation, protection, and prevention of waste of groundwater, and of groundwater resources under §36.0015, Texas Water Code;

WHEREAS, the District consists of Brazos and Robertson counties;

WHEREAS, the District is authorized to make and enforce fair and impartial rules to manage groundwater resources to conserve and protect the aquifers in the area under §36.101, Tex. Water Code;

WHEREAS, the District is required under §36.113, Texas Water Code, to issue permits for the drilling, equipping, operating, or completing of non-exempt wells or for substantially altering the size of wells or well pumps;

WHEREAS, under §36.113(e), Texas Water Code, the District may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations: (1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use; (2) bear a reasonable relationship to the existing district management plan; and (3) are reasonably necessary to protect existing use;

WHEREAS, under §36.116, Texas Water Code, in order to minimize as far as practicable, the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, the District is authorized to regulate the spacing of water wells and the production of groundwater;

WHEREAS, under §36.116(b), Texas Water Code, in promulgating any rules limiting groundwater production, the District may preserve historic or existing use to the maximum extent practicable consistent with the District's management plan;

WHEREAS, under §§36.101, 36.1071, 36.108 and 36.3011, Texas Water Code, the District is required to adopt rules that are designed to achieve the adopted desired future conditions;

WHEREAS, under §36.111, Texas Water Code, the District is authorized to require permit holders to meter their wells using reasonable and appropriate reporting methods and frequency and require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of groundwater;

WHEREAS, under §36.122, Texas Water Code, the District may promulgate rules requiring a person to obtain a permit for the transfer of groundwater out of the District;

WHEREAS, under §36.102, Texas Water Code, the District may enforce Chapter 36 of the Texas Water Code and District Rules against any person by injunction, mandatory injunction, or

other appropriate remedy in a court of competent jurisdiction. The Board by rule may set reasonable civil penalties against any person for breach of any rule of the District not to exceed \$25,000 per day per violation, and each day of a continuing violation constitutes a separate violation. If the District prevails in any suit to enforce its rules, the District may seek and the court shall grant against any person, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the District before the court;

WHEREAS, the District finds it is in the public interest and is within the District's duty to conserve, preserve, protect, and prevent the waste of groundwater to require the future transport of groundwater out of the District to be subject to a permit and permit amendment application process that includes hydrologic review and notice and hearing to the public, as authorized by Chapter 36 of the Texas Water Code;

WHEREAS, the District finds it is in the public interest and is within the District's duty to conserve, preserve, protect, prevent the waste of groundwater, to protect historic and existing use and property rights, and to adopt rules that monitor and enforce the adopted desired future conditions, as authorized by Chapter 36 of the Texas Water Code; and

WHEREAS, the District finds it is in the public interest and is within the District's duty to conserve, preserve, protect, and prevent the waste of groundwater to issue a temporary moratorium for no more than thirty (30) days for accepting new applications for operating permits and transport permits and amendments to existing operating and transport permits during the proposed public comment and hearing process, as the Groundwater Availability Model's demonstrate that the current groundwater production permitted by the District will exceed the adopted desired future conditions adopted under Section 36.108, Texas Water Code.

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT THAT:

- (1) the District shall hold a public hearing on proposed rules July 9, 2026, that includes proposed rules amendments regarding the enforcement of the adopted desired future conditions, transport permit requirements, and well spacing; and
- (2) the District shall not accept new operating or transport permit applications or permit amendments applications until after the July 9, 2026 public hearing and Board meeting in which the District publicly discusses and acts on new rules.

PASSED AND APPROVED this the 11th day of June 2026

BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT



Jayson Barfknecht, President



Jeff Kennedy, Secretary

Appendix “C”

Copies of my e-mails and Mr. Day’s Responses

From: [Ed McCarthy](#)
To: [Alan Day](#)
Cc: [Eddie McCarthy](#)
Bcc: [Ed McCarthy](#)
Subject: BVGCD Moratorium and Rulemaking Hearing
Date: Friday, June 26, 2026 2:51:00 PM
Attachments: [An-Order-Regarding-Proposed-Rules-Moratorium-Executed-6-11-26-1.pdf](#)
[Regular-Board-Meeting-Notice-Agenda-June-11-2026.pdf](#)
[BVGCD-draft-proposed-rule-amendments-for-7-15-26-public-hearing-6-22-26.pdf](#)
[Public-Rules-Hearing-Notice-July-15-2026.pdf](#)

Good afternoon Alan

In reviewing and researching the BVGCD's proposed rulemaking, currently set for hearing on July 15th, I learned about the June 11th moratorium order on new permit/amendment applications related to a rulemaking process to be conducted July 9th (according to the moratorium order). I am trying to reconcile the inconsistency on dates for rule making and get information on when the action on the moratorium dated June 11th was noticed and held in an open meeting. As read it, the attached June 11th Board Meeting Agenda is silent on the subject.

Can you help me out – is there going to be a rulemaking hearing on July 9th and 15th? If not, how does the order for a July 9th hearing in the moratorium affect the noticed hearing for July 15th, and when and where did the moratorium order of June 11th get noticed, posted and acted upon?

As always, I appreciate your assistance.

Thanks.

Ed

From: [Alan Day](#)
To: [Ed McCarthy](#)
Cc: [Monique Norman](#)
Subject: RE: BVGCD Moratorium and Rulemaking Hearing
Date: Saturday, June 27, 2026 7:53:44 AM

Ed,

We will have a board meeting on July 9th to revise and extend the order to July 15th. We will have the Rules Hearing and board meeting on July 15th with possible board action on the proposed rule revisions following the hearing.

We had a notice issue with The Eagle newspaper that created the necessity to reschedule the hearing and board meeting. If you have any questions, please give me a call.

Please reference Agenda items 4 & 5 related to your question about the order.

Have a great weekend!

Alan

From: Ed McCarthy <Ed@ermlawfirm.com>
Sent: Friday, June 26, 2026 2:52 PM
To: Alan Day <aday@brazosvalleygcd.org>
Cc: Eddie McCarthy <Eddie@ermlawfirm.com>
Subject: BVGCD Moratorium and Rulemaking Hearing

Good afternoon Alan

In reviewing and researching the BVGCD's proposed rulemaking, currently set for hearing on July 15th, I learned about the June 11th moratorium order on new permit/amendment applications related to a rulemaking process to be conducted July 9th (according to the moratorium order). I am trying to reconcile the inconsistency on dates for rule making and get information on when the action on the moratorium dated June 11th was noticed and held in an open meeting. As read it, the attached June 11th Board Meeting Agenda is silent on the subject.

Can you help me out – is there going to be a rulemaking hearing on July 9th and 15th? If not, how does the order for a July 9th hearing in the moratorium affect the noticed hearing for July 15th, and when and where did the moratorium order of June 11th get noticed, posted and acted upon?

As always, I appreciate your assistance.

Thanks.

Ed

From: [Ed McCarthy](#)
To: [Alan Day](#)
Cc: [Monique Norman](#); [Eddie McCarthy](#)
Bcc: [Ed McCarthy](#)
Subject: RE: BVGCD Moratorium and Rulemaking Hearing
Date: Saturday, June 27, 2026 11:56:00 AM
Attachments: [Regular-Board-Meeting-Notice-Agenda-June-11-2026.pdf](#)

Alan

Thank you for the clarification on the dates for the Rule Making Hearing.

I did not see an attachment to your email, so that I am clear, when you refer to agenda items 4 & 5, are you referring to the attached June 11th Agenda?

Thanks.

Ed

Cc: Monique Norman
Eddie McCarthy

From: Alan Day <aday@brazosvalleygcd.org>
Sent: Saturday, June 27, 2026 7:54 AM
To: Ed McCarthy <Ed@ermlawfirm.com>
Cc: Monique Norman <norman.law@earthlink.net>
Subject: RE: BVGCD Moratorium and Rulemaking Hearing

Ed,

We will have a board meeting on July 9th to revise and extend the order to July 15th. We will have the Rules Hearing and board meeting on July 15th with possible board action on the proposed rule revisions following the hearing.

We had a notice issue with The Eagle newspaper that created the necessity to reschedule the hearing and board meeting. If you have any questions, please give me a call.

Please reference Agenda items 4 & 5 related to your question about the order.

Have a great weekend!

Alan

From: Ed McCarthy <Ed@ermlawfirm.com>
Sent: Friday, June 26, 2026 2:52 PM

From: [Alan Day](#)
To: [Ed McCarthy](#)
Cc: [Monique Norman](#)
Subject: RE: BVGCD Moratorium and Rulemaking Hearing
Date: Sunday, June 28, 2026 10:30:49 AM

Ed,

I apologize for not doing a better job of referencing my response. Yes, I referenced the June 11th agenda which you attached.

Have a great day!

Alan

From: Ed McCarthy <Ed@ermlawfirm.com>
Sent: Saturday, June 27, 2026 11:56 AM
To: Alan Day <aday@brazosvalleygcd.org>
Cc: Monique Norman <norman.law@earthlink.net>; Eddie McCarthy <Eddie@ermlawfirm.com>
Subject: RE: BVGCD Moratorium and Rulemaking Hearing

Alan

Thank you for the clarification on the dates for the Rule Making Hearing.

I did not see an attachment to your email, so that I am clear, when you refer to agenda items 4 & 5, are you referring to the attached June 11th Agenda?

Thanks.

Ed

Cc: Monique Norman
Eddie McCarthy

From: Alan Day <aday@brazosvalleygcd.org>
Sent: Saturday, June 27, 2026 7:54 AM
To: Ed McCarthy <Ed@ermlawfirm.com>
Cc: Monique Norman <norman.law@earthlink.net>
Subject: RE: BVGCD Moratorium and Rulemaking Hearing

Ed,

We will have a board meeting on July 9th to revise and extend the order to July 15th. We will have

the Rules Hearing and board meeting on July 15th with possible board action on the proposed rule revisions following the hearing.

We had a notice issue with The Eagle newspaper that created the necessity to reschedule the hearing and board meeting. If you have any questions, please give me a call.

Please reference Agenda items 4 & 5 related to your question about the order.

Have a great weekend!

Alan

From: Ed McCarthy <Ed@ermlawfirm.com>
Sent: Friday, June 26, 2026 2:52 PM
To: Alan Day <aday@brazosvalleygcd.org>
Cc: Eddie McCarthy <Eddie@ermlawfirm.com>
Subject: BVGCD Moratorium and Rulemaking Hearing

Good afternoon Alan

In reviewing and researching the BVGCD's proposed rulemaking, currently set for hearing on July 15th, I learned about the June 11th moratorium order on new permit/amendment applications related to a rulemaking process to be conducted July 9th (according to the moratorium order). I am trying to reconcile the inconsistency on dates for rule making and get information on when the action on the moratorium dated June 11th was noticed and held in an open meeting. As read it, the attached June 11th Board Meeting Agenda is silent on the subject.

Can you help me out – is there going to be a rulemaking hearing on July 9th and 15th? If not, how does the order for a July 9th hearing in the moratorium affect the noticed hearing for July 15th, and when and where did the moratorium order of June 11th get noticed, posted and acted upon?

As always, I appreciate your assistance.

Thanks.
Ed

Appendix “D”

Copy of May 24th Board Agenda



Agenda

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT
Regular Board Meeting
District Office
112 W. 3rd Street – Hearne, Texas
Thursday, May 21, 2026 – 2:00 p.m.**

Notice is given that the Board of Directors of the Brazos Valley Groundwater Conservation District will hold a Regular Board Meeting on Thursday, May 21, 2026 @ 2:00 p.m. in the District Office.

Call meeting to order

Pledge of Allegiance

Declare quorum present

Public Comment

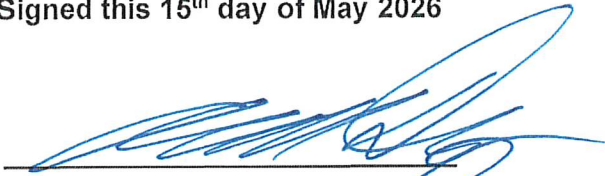
a) Non-agenda items

b) Agenda items

1. Discussion and possible action on the minutes of April 9, 2026, Permit Hearing & Regular Board Meeting
2. Financial Report – April 2026
3. Discussion and possible action regarding the engagement of a contractor to complete an access into the H&R Block property and incorporating the area into the existing District Office space.
4. Executive Session:
 - Texas Government Code 551.071 – To receive attorney-client privileged information regarding:
 - pending lawsuit Fazzino Investments, LP v. Brazos Valley Groundwater Conservation District, CASE NO. 6:25-cv-00001, filed in the United States District Court for the Western District of Texas, Waco Division;
 - establishing Desired Future Conditions for all aquifers within the boundaries of the BVGCD and related statutory considerations and associated rules
 - GMA-wide well mitigation under interlocal agreements
5. Discussion and possible action on items listed and deliberated in Executive Session, as noticed above in Agenda Item 4.
 - Fazzino Investments, LP v. BVGCD
 - Matters related to the adoption of Desired Future Conditions and statutory considerations and associated rules
 - GMA-wide well mitigation under interlocal agreements

6. General Manager's Report
 - a) Drought Monitor Report
 - b) Wells permitted pursuant to District Rule 8.3(j)(1)
 - c) Update of Upcoming Permits yet to be drilled
 - d) District Business & Activities
 - e) Management Plan Update
7. Discussion and possible future agenda items.
8. Adjourn

Signed this 15th day of May 2026


Alan M. Day, General Manager

The Board of Directors may meet in closed session, pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071-551.076, to:

- (1) consult with attorney;
- (2) deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (3) deliberate a negotiated contract for a prospective gift or donation to the District if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (4) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a Board member or District employee;
- (5) to receive information from employees or question employees, but not deliberate public business or agency policy that affects public business; and
- (6) to deliberate the deployment or specific occasions for implementation of security personnel or devices.

The Board may also meet in open session on these matters as required by the Texas Open Meetings Act, Texas Government Code § 551.102.

**** Agenda items may be taken out of order at the discretion of the Board Chairman**

Appendix “E”

Copy of April 9th Board Agenda



Agenda

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT
Regular Board Meeting
District Office
112 W. 3rd Street – Hearne, Texas
Thursday, April 9, 2026 – 2:00 p.m.**

Notice is given that the Board of Directors of the Brazos Valley Groundwater Conservation District will hold a Regular Board Meeting on Thursday, April 9, 2026 @ 2:00 p.m. in the District Office.

Call meeting to order

Pledge of Allegiance

Declare quorum present

Public Comment

a) Non-agenda items

b) Agenda items

1. Discussion and possible action on the minutes of March 9, 2026, Permit Hearing & Regular Board Meeting
2. Financial Report – March 2026
3. Discussion and possible action regarding sealed bids received in response to a notice of renovation work to be completed on the former H&R Block property and incorporating the property into the existing District Office space.
4. Discussion of the House Natural Resources and Senate Water, Agriculture, and Rural Affairs Committee 89th Legislative Interim charges.
5. Executive Session:
 - Texas Government Code 551.071 – To receive attorney-client privileged information regarding:
 - pending lawsuit Fazzino Investments, LP v. Brazos Valley Groundwater Conservation District, CASE NO. 6:25-cv-00001, filed in the United States District Court for the Western District of Texas, Waco Division;
 - establishing Desired Future Conditions for all aquifers within the boundaries of the BVGCD and related statutory considerations and associated rules
6. Discussion and possible action on items listed and deliberated in Executive Session, as noticed above in Agenda Item 5.
 - Fazzino Investments, LP v. BVGCD
 - Matters related to the adoption of Desired Future Conditions and statutory considerations and associated rules

7. General Manager's Report
 - a) Drought Monitor Report
 - b) Wells permitted pursuant to District Rule 8.3(j)(1)
 - c) Update of Upcoming Permits yet to be drilled
 - d) District Business & Activities
 - e) Management Plan Update
8. Discussion and possible future agenda items.
9. Adjourn

Signed this 2nd day of April 2026



Alan M. Day, General Manager

The Board of Directors may meet in closed session, pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071-551.076, to:

- (1) consult with attorney;
- (2) deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (3) deliberate a negotiated contract for a prospective gift or donation to the District if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (4) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a Board member or District employee;
- (5) to receive information from employees or question employees, but not deliberate public business or agency policy that affects public business; and
- (6) to deliberate the deployment or specific occasions for implementation of security personnel or devices.

The Board may also meet in open session on these matters as required by the Texas Open Meetings Act, Texas Government Code § 551.102.

**** Agenda items may be taken out of order at the discretion of the Board Chairman**

Appendix “F”

Copy of Today’s (July 9th) Agenda



Agenda

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT
Regular Board Meeting
District Office
112 W. 3rd Street – Hearne, Texas
Thursday, July 9, 2026 – 2:00 p.m.**

Notice is given that the Board of Directors of the Brazos Valley Groundwater Conservation District will hold a Regular Board Meeting on Thursday, July 9, 2026 @ 2:00 p.m. in the District Office.

Call meeting to order

Pledge of Allegiance

Declare quorum present

Public Comment

- a) Non-agenda items
- b) Agenda items

1. Discussion and possible action to amend Board Order regarding public hearing on proposed rules and acceptance of new permit/permit amendment applications to July 15, 2026.
2. Adjourn

Signed this 2nd day of July 2026

Alan M. Day, General Manager

The Board of Directors may meet in closed session, pursuant to the Texas Open Meetings Act, Texas Government Code §§ 551.071-551.076, to:

- (1) consult with attorney;
- (2) deliberate regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (3) deliberate a negotiated contract for a prospective gift or donation to the District if deliberation in an open meeting would have a detrimental effect on the position of the District in negotiations with a third person;
- (4) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a Board member or District employee;
- (5) to receive information from employees or question employees, but not deliberate public business or agency policy that affects public business; and
- (6) to deliberate the deployment or specific occasions for implementation of security personnel or devices.

The Board may also meet in open session on these matters as required by the Texas Open Meetings Act, Texas Government Code § 551.102.

**** Agenda items may be taken out of order at the discretion of the Board Chairman**