

IN THE MATTER OF

CITY OF BRYAN

WELL NO. 18 AND BV-DO-003

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BEFORE THE BRAZOS VALLEY

GROUNDWATER

CONSERVATION DISTRICT

**CITY OF BRYAN'S MOTION FOR REHEARING**

The City of Bryan files this motion for rehearing of the April 13, 2017 decision of the Board of the Brazos Valley Groundwater Conservation District ("The District") to refer to a hearing examiner the complaint filed by Brazos Valley Groundwater Rights Association (BVGRA) and Tony Fazzino concerning Bryan's Well 18, and in support thereof would show the following:

**I. The Board's Action in Issuing Permit BV-DO-003 is Conclusively Presumed Valid**

Pursuant to Texas Water Code section 36.124 the District's action in issuing permit BV-DO-003 authorizing drilling and operation of Bryan's Well No. 18 is conclusively presumed valid because the Board's actions in granting this permit occurred more than three years ago and a lawsuit to annul or invalidate the Board's action was not filed on or before the third anniversary of that action. The complaint alleges irregularities associated with the original issuance of permit BV-DO-003. The alleged irregularities concern notice to adjoining property owners, issuance of the permit by the general manager prior to Board approval of the hydrogeological study, and an alleged false statement submitted by Bryan in its application.

On August 3, 2006 BVGCD's Board conditionally approved Bryan's permit application for Well No. 18 contingent on a hydrogeological study<sup>1</sup>. On February 20, 2007, following review of the hydrogeological study, BVGCD's general manager issued permit BV-DO-003 authorizing the City of Bryan to operate Well No. 18. On April 11, 2013 the BVGCD Board ratified the approval of the hydrogeological study for the City of Bryan's Well No. 18.<sup>2</sup> On April 17, 2013 BVGCD's general manager issued a renewal of permit BV-DO-003 authorizing Bryan to operate Well No. 18.

<sup>1</sup> BVGCD meeting transcript, Aug. 3, 2006 at pg. 17-18; 27; BVGCD minutes of Aug. 3, 2006 Board meeting, item 5.

<sup>2</sup> BVGCD meeting transcript, April 11, 2013 at pg. 42-43; BVGCD minutes of April 11, 2013 Board meeting, item 10.

The actions of the District concerning issuance of BV-DO-003 occurred more than three years ago. No lawsuit challenging the validity of the District's acts or proceedings was filed on or before the third anniversary of those actions. Accordingly, the actions of the District concerning issuance of permit BV-DO-003 are conclusively presumed valid. As a matter of law, the complaint should be denied and no hearing is required.

**II. Bryan's Alleged False Statement Was Not Material to Issuance of Permit BV-DO-003**

During argument on April 13, 2017 counsel for BVGRA and Fazzino admitted that Bryan's Well 18 was an existing well. The alleged false statement in Bryan's 2006 permit application that BVGRA and Fazzino complain of was in response to application item 3(a) requesting that the applicant attach information concerning the "required contiguous acreage (per district Rule 7.1(2)". By its express terms Rule 7.1(2) applied solely to new wells. Because Bryan's Well 18 was an existing well<sup>3</sup>, it was not subject to Rule 7.1(2) or the requirement of the application to attach information concerning contiguous acreage. Accordingly, no response was required and any response provided would not be material. Because the alleged false statement was not material, the complaint should be denied as a matter of law and no hearing is required.

**III. Re-urged Grounds for Denial of the Complaint**

Bryan previously filed its Response to the Complaint on February 3, 2017 and its Supplemental Response to the Complaint on April 10, 2017. Bryan re-urges the arguments set forth in those responses and incorporates them into this Motion for Rehearing as if fully set forth.

**IV. Conclusion**

For the reasons set forth in this Motion for Rehearing, the City of Bryan requests that the Board of the BVGCD re-hear this matter, and upon rehearing, that the Board withdraw its order referring the complaint to a hearing examiner and deny the complaint.

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<sup>3</sup> The status of Bryan's well 18 as an existing well has not only been admitted by counsel for BVGRA and Fazzino it has also been acknowledged by BVGCD's legal counsel during the initial hearing on the Well 18 permit in 2006 and BVGCD Board members during the hearing on permit renewal 2013. See BVGCD meeting transcript, Aug. 3, 2006 at pg.11 and BVGCD meeting transcript, April 11, 2013 at pg. 42.

Respectfully submitted,

MATHEWS & FREELAND, L.L.P.

By: \_\_\_\_\_

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**ATTORNEYS FOR  
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**CERTIFICATE OF SERVICE**

I certify that on April 20, 2017, a copy of the foregoing pleading was served on all parties of record in this proceeding via hand delivery, email, facsimile, or United States Mail.

A handwritten signature in black ink, appearing to read "Jim Mathews", is written over a horizontal line.

Jim Mathews

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