

CAUSE NO. 24-002626-CV-472

TEXAS A&M UNIVERSITY SYSTEM,	§	
	§	
<i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
vs.	§	
	§	
BRAZOS VALLEY GROUNDWATER	§	
CONSERVATION DISTRICT AND	§	
ALAN DAY, GENERAL MANAGER	§	
OF BRAZOS VALLEY	§	
GROUNDWATER CONSERVATION	§	BRAZOS COUNTY, TEXAS
DISTRICT,	§	
	§	
<i>Defendants,</i>	§	
	§	
vs.	§	
	§	
UW BRAZOS VALLEY FARM LLC, et	§	
al.,	§	472nd JUDICIAL DISTRICT
	§	
<i>Intervenors.</i>	§	

**LANDOWNER INTERVENORS' OBJECTION TO AND MOTION TO STRIKE
THE CITY OF BRYAN, CITY OF COLLEGE STATION, AND BRAZOS COUNTY'S
RESPONSE TO SUMMARY JUDGMENT**

Intervenors UW Brazos Valley Farm LLC, Cula d'Brazos LLC, RH2O LLC, L. Wiese Moore LLC, Clifford A. Skiles III, and James C. Brien (the "Landowner Intervenors") file this Objection to and Motion to Strike the City of Bryan, City of College Station, and Brazos County's (collectively, the "Brazos County Entities") Response to the Landowner Intervenors' Motion for Summary Judgment filed November 27, 2024.

The Landowner Intervenors already moved to strike the Brazos County Entities' Petition in Intervention (attached as Exhibit A and incorporated by reference herein). As explained in that motion, the Brazos County Entities lack a justiciable interest in this case. But despite their lack of justiciable interest in the case, the Brazos County Entities have now filed a response to Landowner

Intervenors' Traditional Motion for Summary Judgment, arguing the summary-judgment issues are not ripe.¹ As with the case as a whole, the Brazos County Entities lack a sufficient justiciable interest in the Landowner Intervenors' Motion for Summary Judgment. The Court should therefore grant the Landowner Intervenors' objection and strike the Brazos County Entities' Response to the Landowner Intervenors' Motion for Summary Judgment (and any evidence filed alongside the Response), along with the Brazos County Entities' Petition in Intervention.

Prayer

The Landowner Intervenors respectfully object to the City of Bryan, City of College Station, and Brazos County's Response to the Landowner Intervenors' Motion for Summary Judgment filed November 27, 2024 and ask the Court to strike it, as well as their Petition in Intervention filed November 6, 2024.

Dated: December 5, 2024

Respectfully submitted,

BAKER BOTTS L.L.P.

By:  _____

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¹ The Brazos County Entities also filed a Plea to the Jurisdiction. Because Intervenors have nonsuited their claims for affirmative relief, that Plea is moot.

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LLC, CULA D'BRAZOS LLC, RH2O LLC,
L. WIESE MOORE LLC, CLIFFORD A. SKILES III,
AND JAMES C. BRIEN**

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2024, a true and correct copy of the foregoing was served electronically on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Kevin T. Jacobs
Kevin T. Jacobs

Exhibit A

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	§	
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GROUNDWATER CONSERVATION	§	BRAZOS COUNTY, TEXAS
DISTRICT,	§	
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<i>Defendants.</i>	§	
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UW BRAZOS VALLEY FARM LLC, et	§	
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	§	
<i>Intervenors</i>	§	

**UW BRAZOS VALLEY FARM LLC’S
MOTION TO STRIKE THE CITY OF BRYAN, CITY OF COLLEGE STATION, AND
BRAZOS COUNTY’S ORIGINAL PETITION IN INTERVENTION**

Intervenors UW Brazos Valley Farm LLC (“UW Farm”), together with Intervenors Cula d’Brazos LLC, RH2O LLC, L. Wiese Moore LLC, Clifford A. Skiles III, and James C. Brien (“Landowner Intervenors”, together with UW Farm, the “Intervenors”), file this Motion to Strike the City of Bryan (“Bryan”), City of College Station (“College Station”), and Brazos County’s (collectively, the “Brazos County Entities”) Original Petition in Intervention.

I. SUMMARY OF THE ARGUMENT

This case presents a straightforward procedural question: whether Texas A&M University System (“Plaintiff”) can circumvent clear administrative deadlines to challenge already-final groundwater permits and cast doubt and clouds over well-established property rights. The Brazos County Entities—who have never contested these permits—now seek to intervene based on

generalized concerns about water availability that are speculative and entirely unrelated to the procedural issue before this Court.

The legal test for intervention is straightforward: do the Brazos County Entities have a justiciable interest in this lawsuit? The answer is equally as straightforward—no. The Brazos County Entities’ Original Petition in Intervention introduces new issues entirely unrelated to Plaintiff’s procedural claim. The Brazos County Entities never contested the Intervenors’ validly issued permits. And Plaintiff is not challenging any of the Brazos County Entities’ permits. Accordingly, the litigation of Plaintiff’s claims will *in no way* affect the Brazos County Entities’ rights, and the Court should strike their Original Petition in Intervention.

II. BACKGROUND

The Brazos Valley Groundwater Conservation District (“BVGCD”) properly issued Intervenors’ groundwater permits in April 2019, October 2022, and February, March, and September of 2023. On September 5, 2024—years after the administrative deadlines have passed—Plaintiff submitted contested case hearing requests, challenging Intervenors’ validly issued permits. The BVGCD denied those hearing requests. Plaintiff then asked the Court to resurrect its long-dead contest window, due to a purported eligibility issue for three BVGCD board members that allegedly began in January 2023 and resolved in approximately July 2024. Without any explanation and in violation of Texas law, Plaintiff asserts that this eligibility issue allows an “administrative re-do” on final permits issued and long-relied-on for millions of dollars of investment. Pl.’s Am. Writ of Mandamus ¶ 29; Intervenors’ Pet. in Interv. ¶ 4.

In its Petition for Writ of Mandamus, Plaintiff requests the BVGCD conduct hearings for 48 production permits and one transportation permit, all belonging to Intervenors. Pl.’s Am. Writ of Mandamus ¶ 19. Telling of its true motives, Plaintiff does not contest any other action by the

BVGCD from budgets to hirings to over 50 other permits issued to other parties, including the Brazos County Entities. To protect their vested property rights from Plaintiff's unsupported attack, Intervenors filed their Petition in Intervention on November 5, 2024. *See* Pet. in Intv.

The next day, the Brazos County Entities filed their Original Petition in Intervention, making assertions about “reductions in artesian head at *the cities*' wells” and their own costs and retail water rates. Pl.'s Am. Writ of Mandamus ¶ 9. The timing and nature of the Brazos County Entities' intervention appears entirely strategic, as they used their entrance into the lawsuit to create a “business conflict” to force Intervenors' local counsel at West, Webb, Allbritton & Gentry, P.C. to withdraw from the lawsuit. The Court should recognize the Brazos County Entities' lack of justiciable interest in the procedural questions at issue and not reward this tactical maneuver. Accordingly, the Intervenors file this Motion to Strike Brazos County Entities' Original Petition in Intervention.

III. ARGUMENT AND AUTHORITIES

Rule 60 of the Texas Rules of Civil Procedure provides that “[a]ny party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” Tex. R Civ. P.60. A party who opposes the intervention may challenge it by a motion to strike. *Guaranty Fed. Sav. Bank v. Horseshoe Op. Co.*, 793 S.W.2d 652, 657 (Tex.1990). After a motion to strike is filed, the intervenor—here, the Brazos County Entities—has the burden to demonstrate a justiciable interest in the lawsuit “by proving that adjudication of contested issues will conclusively affect him.” *Galveston County Comm'rs v. Lohec*, 814 S.W.2d 751, 755 (Tex. App.—Houston [14th Dist.] 1991), rev'd on other grounds *Lohec v. Galveston Cnty. Comm'rs Ct.*, 841 S.W.2d 361 (Tex. 1992). Even if a party can show it has a justiciable interest, the Court should still strike the petition in intervention if it would complicate the case by excessively multiplying

the issues, and is not essential to effectively protect the party's rights. *See Intermarque Auto. Prods., Inc. v. Feldman*, 21 S.W.3d 544, 549 (Tex. App.—Texarkana 2000, no pet.).

The Court should strike the Brazos County Entities' Original Petition in Intervention because they cannot meet their burden of showing that they have a justiciable interest in this lawsuit. To constitute a justiciable interest, an intervenor's interest "must be such that if the original action had never been commenced, and he had first brought it as the sole plaintiff, he would have been entitled to recover in his own name to the extent at least of a part of the relief sought in the original suit." *In re Union Carbide Corp.*, 273 S.W.3d 152, 155 (Tex. 2008). In other words, a party may intervene if it could have "brought the [pending] action, or any part thereof, in his own name." *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

The Brazos County Entities Petition in Intervention correctly describes this case in a section titled "The Lawsuit":

"On September 13, 2024, Plaintiff filed its First Amended Petition for Writ of Mandamus and Application for Temporary and Permanent Injunctive Relief seeking an order compelling Defendant to schedule a preliminary hearing on Plaintiff's requests for hearing on various groundwater permit applications that were pending before the Defendant."

See Brazos County Entities' Pet. ¶ 12. And that is exactly right. This is a lawsuit by Plaintiff, seeking to compel the BVGCD to schedule a preliminary hearing on "*Plaintiff's* requests" for hearing on various of Intervenor's groundwater permits. *See Caprock Inv. Corp. v. FDIC*, 17 S.W.3d 707, 711 (Tex. App.—Eastland 2000, pet. denied) (A "trial court should determine the party's justiciable interest on the basis of the sufficiency of the petition in intervention."). The Brazos County Entities never filed such requests themselves. Nor is Plaintiff challenging their permits issued under the same circumstances as Intervenor's. They cannot possibly bring an action to compel a hearing on non-existent requests.

Instead, the Brazos County Entities' Original Petition in Intervention rests entirely on generalized concerns about water availability and prices—issues that are not and cannot be before this Court. Again, this case concerns whether Plaintiff can bypass administrative deadlines based on alleged board member eligibility issues to selectively attack another property owner in this region. The Brazos County Entities' rights cannot possibly be affected by this procedural question, especially given that (i) Plaintiff is not challenging Bryan or College Stations' permits, even though the City of Bryan and College Station themselves received permits during the alleged problematic time period; (ii) Brazos County has not even alleged it has any groundwater wells in the area; and (iii) none of the Brazos County Entities ever contested the Intervenors' permits.

The Brazos County Entities are attempting to use intervention to bypass proper administrative procedures, strategic attacks on Intervenors' choice of counsel, and raise issues that are not before this Court. Therefore, the Brazos County Entities do not have a justiciable interest in this case.

IV. Conclusion

The Intervenors respectfully ask the Court to strike the City of Bryan, City of College Station, and Brazos County's Original Petition in Intervention.

Dated: November 21, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 21, 2024, a true and correct copy of the above and foregoing was served on all known counsel of record via the Court's electronic filing system and/or email as follows:

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Kevin T. Jacobs

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Filing Description: UW Brazos Valley Farm LLC's Motion to Strike Brazos County Entities' Original Petition in Intervention
Status as of 11/21/2024 3:23 PM CST

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Raylynn Howell on behalf of Kevin Jacobs

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