

SOAH DOCKET NO. 900-25-04017

TRANSPORT PERMIT	§	
APPLICATIONS BY UW BRAZOS	§	
VALLEY FARM LLC AS CO-	§	BEFORE THE STATE OFFICE
APPLICANT WITH THE	§	
FOLLOWING: RH2O LLC (BVTP-002),	§	
CLIFFORD A. SKILES III (BVTP-003),	§	OF
JAMES C. BRIEN (BVTP-004), L.	§	
WIESE MOORE LLC (BVTP-005),	§	
FAZZINO INVESTMENTS LP (BVTP-	§	ADMINISTRATIVE HEARINGS
006), ELY FAMILY PARTNERSHIP LP	§	
(BVTP-007), CULA D’BRAZOS LLC	§	
(BVTP-008)	§	

APPLICANTS’ REPLY IN SUPPORT OF MOTION TO SET PROCEDURAL
SCHEDULE AND ASSIGN DISCRETE DOCKET NUMBERS
FOR EACH APPLICATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Applicants’ December 9, 2024 motion (the “Motion”) makes two requests: (1) that the ALJ order the parties to submit an agreed procedural schedule, or proposed schedules if an agreement is not reached; and (2) that within a single proceeding, the ALJ assign discrete docket numbers to each of the seven applications at issue, for reference purposes. These requests aim to “to ensure the just and expeditious determination” of contested applications that Applicants submitted to the District almost a full year ago.¹

I. A procedural schedule will prevent further delay in hearing the Applications.

First, Applicants request that the ALJ direct the parties to submit an agreed procedural schedule, or proposed schedules if no agreement is reached, and to finalize a schedule in advance

¹ See 1 Tex. Admin. Code § 155.3(g).

of the February 10, 2025 mediation with Judge Linda Brite. The General Manager does not oppose setting a procedural schedule in advance of mediation.

SOAH has a very busy docket; setting a schedule will address both the ALJ's scheduling constraints and the Parties' competing obligations as they plan for the year ahead. This framework will also take into account the scheduled mediation and will establish dates for discovery, disclosures, designations, and other deadlines that commence only *after* that mediation. Setting a schedule for the hearing that Protestants requested neither favors Applicants nor changes the dynamic of mediation. This procedural scaffolding will focus and encourage settlement discussions, not hinder them.

What the Protestants' filings make clear is that their preference is continued delay. To maximize delay, they first claimed unavailability to mediate for months, and now seek to defer a schedule and then attempt to import issues (and mischaracterizations) related to their pending collateral attacks on final, issued permits. These allegations are outside the scope of the referred and docketed Applications.

Applicants remain willing to work toward settlement and to engage in a good-faith mediation. However, despite Applicants providing multiple proposals since the summer, including most recently at the beginning of November, Applicants have no indication that all of the Protestants are willing to mediate in good faith. Currently, the Protestants have declined to negotiate individually with Applicants.

Protestants asked for a hearing on each of the Applicants' transport applications. Applicants simply request a fair and efficient process to address these challenges. This is best achieved by establishing a schedule to govern the procedures and ensure proper and timely hearing

of these issues. Particularly in light of the extraordinary demands on SOAH and the ALJ's calendar, Applicants respectfully ask that SOAH order a process to set the schedule now.

Applicants' Motion seeks a common-sense procedural schedule to aid the ALJ and the Parties in planning for this matter. Applicants respectfully ask that the ALJ direct the parties to submit an agreed schedule or proposed schedules on or before **December 23, 2024**.


II. Establishing separate SOAH dockets for each Application will properly reflect the unique Parties involved.

Applicants also requested separate SOAH dockets for each of the seven Applications at issue in this proceeding. Like the request for a procedural schedule, this request is not made to disfavor Protestants, but instead to address practical considerations. Each Application was submitted by a distinct person, family, or entity in Robertson County that, at the District's request, added UWBFV as a co-applicant. Each Applicant (with its co-applicant) agreed in its application to accept a permit condition that applies a cap to the total volume of export by cross reference to the other specified transport permits; each application was declared administratively complete and referred for this consolidated SOAH hearing. This request will not require separate proceedings or separate proposals for decision but will instead delineate the distinct Applications that will ultimately return to the District Board for final action in accordance with law. If your honor believes it is equally appropriate to identify each application by the District permitting number—*e.g.*, BVTP-02, BVTP-03, etc.—Applicants can proceed accordingly.

III. Conclusion

Applicants respectfully request that the ALJ (1) issue an order directing the parties to file by **December 23, 2024**, an agreed procedural schedule or proposed schedules if an agreement is not reached; and (2) assign discrete docket numbers to each Application to be heard in this consolidated SOAH proceeding.

Respectfully submitted on
December 17, 2024:

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December 2024, I e-filed and served a true and correct copy of the foregoing motion via electronic mail to the following:

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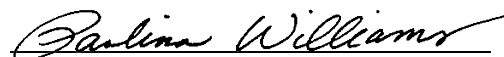
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SOAH DOCKET NOS. 900-25-04017, _____, _____,
_____, _____, _____, & _____.

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	§	

**[PROPOSED] ORDER GRANTING
APPLICANTS’ MOTION TO SET PROCEDURAL SCHEDULE AND
ASSIGN DISCRETE DOCKET NUMBERS FOR EACH APPLICATION**

On December 9, 2024, UW Brazos Valley Farm LLC (“UW Farm”), RH2O LLC, Clifford A. Skiles III, James C. Brien, L. Wiese Moore LLC, Fazzino Investments LP, Ely Family Partnership LP, and Cula d’Brazos LLC (together, the “Applicants”) filed a Motion to Set Procedural Schedule and Assign Discrete Docket Numbers for Each Application. On December 16, 2024, Protestants Texas A&M University System, City of Bryan, City of College Station, and Brazos County filed their response(s).

Having considered the briefing, law, and all arguments, the Administrative Law Judge hereby **GRANTS** Applicants’ Motion. The parties are hereby **ORDERED** to comply with the following:

1. By **December 23, 2024**, the parties are directed to file an agreed procedural schedule or opposing schedules if an agreement is not reached. Such procedural schedule(s) shall include:

- a. Date(s) for a prehearing conference, if needed, to hear argument on conflicting proposed schedules and address the District's submission of applicable rules or policies as described in Tex. Water Code § 36.416(e)
 - b. Discovery period
 - c. Deadline to provide initial disclosures as described in TRCP 194.2(b)
 - d. Deadline(s) to designate fact and expert witnesses and provide materials described by TRCP 195.5(a)
 - e. Deadline(s) to supplement designation of expert witnesses
 - f. Deadline(s) to submit prefiled testimony and exhibits
 - g. Deadline(s) for objections and motions to strike testimony and exhibits, and responses
 - h. Deadline(s) for any dispositive motions, and responses
 - i. Date(s) for prehearing conference, if needed
 - j. Date(s) for hearing on the merits
2. The Administrative Law Judge hereby assigns the following docket numbers to the below-listed applications, and the parties are directed to include all docket numbers in subsequent filings in this proceeding:
- a. RH2O LLC (BVTP-002) – Docket No. _____
 - b. Clifford A. Skiles III (BVTP-003) – Docket No. _____
 - c. James C. Brien (BVTP-004) – Docket No. _____
 - d. L. Wiese Moore LLC (BVTP-005) – Docket No. _____
 - e. Fazzino Investments LP (BVTP-006) – Docket No. _____
 - f. Ely Family Partnership LP (BVTP-007) – Docket No. _____
 - g. Cula D'Brazos LLC (BVTP-008) – Docket No. _____

SIGNED _____, 2024.

REBECCA SMITH
Administrative Law Judge
State Office of Administrative Hearings