

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

ORDER NO. 1

**PRELIMINARY HEARING
DETERMINATION OF PARTY STATUS
AND DECLARATION OF CONTEST CASE**

WHEREAS, the Brazos Valley Groundwater Conservation District ("District") was created and charged by the Texas Legislature to provide for the conservation, preservation, protection, and prevention of waste of groundwater, and of groundwater resources in Robertson and Brazos Counties, under Chapter 8835 of the Special District Local Law Code, §36.0015, Tex. Water Code, and Section 59 of Article XVI of the Texas Constitution;

WHEREAS, §36.113 of the Texas Water Code mandates that the District requires permits for the drilling, equipping, operating, or completing of groundwater wells and authorizes the District to require permit applications;

WHEREAS, §36.1132 of the Texas Water Code requires the District to issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under §36.108 of the Texas Water Code;

WHEREAS, §36.122 of the Texas Water Code authorizes the District, in reviewing a proposed transfer of groundwater out of the District, to consider, in addition to the permit requirements adopted by rule under §36.113 of the Texas Water Code:

- (1) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;
- (2) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and
- (3) the approved regional water plan and approved District management plan;

WHEREAS, a non-exempt well may not be drilled or operated in the District without first applying for and being issued a permit by the District pursuant to Section 8 of the District Rules. Prior to groundwater being transported out of the District from a well, compliance with Section 10 of the District Rules must be achieved, including submittal of the required information and studies of District Rule 8.4 as part of the transport permit application.

WHEREAS, the District held a public hearing on June 18, 2024, on the following aggregated transport permit applications for a planned project to transport groundwater from the Simsboro Aquifer in Roberston County, Texas: (BVTP-002) for RH2O LLC; (BVTP-003) for Clifford A. Skiles III; (BVTP-004) for James C. Brien; (BVTP-005) for L. Wiese Moore LLC; (BVTP-006) for Fazzino Investments LP; (BVTP-007) for Ely Family Partnership LP; and (BVTP-008) for Cula d'Brazos LLC, all of whom are co-applicants with UW Brazos Valley Farm LLC;

WHEREAS, the Texas A&M University System, the City of Bryan, the City of College Station, Brazos County, and Ermine Michael Dieckman submitted contested case hearing requests on the above-listed transport permit applications in accordance with District Rule 14.3.5;

WHEREAS, §§36.4051 and 36.415 of the Texas Water Code and District Rules 14.3 and 14.3.5 require the District's Board of Directors ("Board") to schedule a preliminary hearing to determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. Participation in a hearing on a contested application is limited to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by the permit applications, not including persons who have an interest common to members of the public;

WHEREAS, following the preliminary hearing, the Board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised;

WHEREAS, co-applicant UW Brazos Valley Farm LLC, submitted a request for the State Office of Administrative Hearings ("SOAH") to conduct the contested case hearing, as applicable, under §36.416 of the Texas Water Code. Co-applicant UW Brazos Valley Farm LLC is then required to pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party; and

WHEREAS, on September 12, 2024, the District's Board approved an interlocal agreement with the SOAH to conduct the contested case hearing, as applicable;

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

1. The following aggregated transport permit applications for a planned project to transport groundwater from the Simsboro Aquifer in Roberston County, Texas, are declared to be contested:

UW Brazos Valley Farm LLC as Co-applicant with the following:

- a. BVTP-002 for RH2O LLC
- b. BVTP-003 for Clifford A. Skiles III
- c. BVTP-004 for James C. Brien
- d. BVTP-005 for L. Wiese Moore LLC BVTP-005
- e. BVTP-006 for Fazzino Investments LP
- f. BVTP-007 for Ely Family Partnership LP
- g. BVTP-008 for Cula d’Brazos LLC

2. The following are determined to be parties to the contested application:

- a. UW Brazos Valley Farm LLC, co-applicant
- b. RH2O LLC, applicant
- c. Clifford A. Skiles III, applicant
- d. James C. Brien, applicant
- e. L. Wiese Moore LLC, applicant
- f. Fazzino Investments LP, applicant
- g. Ely Family Partnership LP, applicant
- h. Cula d’Brazos LLC, applicant
- i. Texas A&M University System, protestant
- j. Brazos County, protestant
- k. City of Bryan, protestant
- l. City of College Station, protestant
- m. Ermine Michael Dieckman, protestant
- n. the District’s General Manager

3. The contested applications are referred to the State Office of Administrative Hearings to conduct the contested case hearing as provided by Chapter 36 of the Texas Water Code, Subchapters C, D, and F, Chapter 2001, Government Code, and agreed to in the District’s interlocal agreement with SOAH.

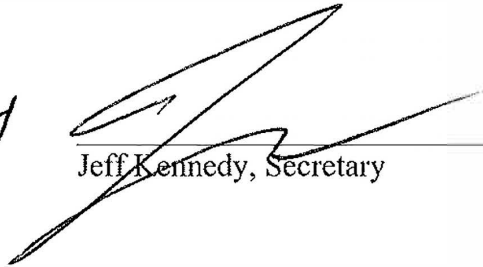
4. With good faith belief that the parties may be able to resolve all or a portion of their dispute in mediation, the Board first refers the parties to participate in SOAH mediation, under 1 Texas Administrative Code §155.351, §36.4165 of the Texas Water Code, and District Rule 14.4(h), prior to the commencement of discovery for the contested case hearing.

5. The Board has the authority to make a final decision on the consideration of a proposal for decision issued by an SOAH administrative law judge in this contested case hearing, in compliance with §36.4165 of the Texas Water Code.

PASSED AND APPROVED this the 10th day of October 2024.

BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT


Jayson Barfknecht, President 10-10-2024
Date


Jeff Kennedy, Secretary 10-10-2024
Date