SOAH DOCKET NO. 955-23-21880

APPLICATION OF VANDERPOOL MANAGEMENT, LP FOR TWO WELL PERMITS FROM BANDERA COUNTY RIVER AUTHORITY AND GROUNDWATER DISTRICT	**§ § § § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

PROTESTANT BANDERA CANYONLANDS ALLIANCE'S REPLIES TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES AND THE BOARD OF BANDERA COUNTY RIVER AUTHORITY AND GROUNDWATER DISTRICT:

Protestant Bandera Canyonlands Alliance ("BCA" or "Protestant") files these Replies to the Exceptions to the Proposal for Decision ("PFD") filed by the General Manager in the above-referenced matter.

I. INTRODUCTION & SUMMARY

BCA generally agrees with the GM's exceptions but offers the following for clarity and consistency. The GM's exceptions maintain that the permits should be granted in the amount of 28 acre-feet per year for each well, or alternatively 10 acre-feet per year per well. The GM's exceptions also mention permit amendments or conditions that should be imposed in various circumstances. BCA files this reply to provide under which circumstances those respective volumes and conditions are appropriate, including, under which circumstances the GM's alternative proposal allowing for "phasing in" of additional pumping over time should apply.

In short, the record supports denial, because the Applicant has failed to provide a water availability study that utilizes best available science, despite multiple opportunities

to do so, and because the Applicant has failed to demonstrate the full 200 acre-feet will be put to beneficial use without waste. However, should the determination be made that, despite Applicant's technically and legally flawed water availability analysis, a permit will be issued, the evidence in the record establishes that Vanderpool ***may*** be able to utilize 20 acre-feet for irrigation of some of the Krum-Pratley soils, as water that could be put to beneficial use without waste. Therefore, the record does not support granting any more than 10 acre-feet per well.

Should the GM's recommendation of 28 acre-feet per well be granted (or any amount over 10 acre-feet per well, for that matter) certain conditions must be imposed on the permit to ensure that the District is fulfilling its statutory responsibility to manage the groundwater resources in order to protect all property owners' property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater in a manner that is equitable to all. *See* Tex. Water Code § 36.0015(b).

Should those conditions be imposed in a measurable and meaningful way, the GM's proposed "phasing in" of a permit could be authorized up to 56 acre-feet (28 acre-feet per well), but certainly the record cannot support a total production beyond 56 acre-feet at this time. To be clear, in limiting the permits to an initial phase, nothing would prevent Vanderpool from seeking an amendment at a later date to produce more groundwater. In fact, the scientific data that would be available pursuant to conditions imposed now may very well support a higher production limit at that time. But it is crucial that the science be available to support the requested production volume and that other potentially affected

persons be able to exercise their right to participate in the permitting process at the time the request volume is up for consideration by the decision-maker. For these reasons, under no approach should the Applications be granted for more than 56-acre feet at this time.

II. REPLY TO THE GENERAL MANAGER'S EXCEPTIONS

To be clear, Vanderpool did not meet its burden of proof to demonstrate that the proposed 200 acre-feet would not unreasonably affect groundwater resources or other permit holders, because Vanderpool did not produce a groundwater availability study that utilized best available science. Therefore, the permits should be denied on this basis alone. However, should the permits be granted based on the amount that ***may*** be put to beneficial use without waste, the record supports permits in the amount of 10 acre-feet per well. If the District permits this amount, it should also require two special conditions to the permit that are designed to fill in a scientific gap left by incomplete or inconsistent applications: (1) that the Applicant conduct another water quality test and submit information that confirms the wells have been drilled and cased properly, such that groundwater quality will be protected; and (2) that Applicant install a surface water monitoring system to provide information that would aid in evaluating the impact of pumping from these two wells on known nearby springs and surface waters.

The following conditions must be imposed in order to remedy other deficiencies in the Applications should the District decide to permit greater production, as the GM puts forth as alternative recommendations in his exceptions.

A. Any permitted production limit of more than 10 acre-feet per well requires conditions involving monitoring aquifer conditions and impacts on neighboring wells.

Should the District set production limits at 28 acre-feet, as the GM recommends as one alternative, conditions must be imposed on the permits that are designed specifically to help remedy the deficiency in the Applicant's water availability study. The GM has proposed as one condition of a permitting decision, the condition that Vanderpool be required to monitor the aquifer conditions at the location of the wells and at the site of neighboring properties. BCA asserts that this condition is required should the permits be granted for any more than 10 acre-feet per well and up to 28 acre-feet per well. However, this condition would not be sufficient beyond 28 acre-feet per well to ensure pumping does not unreasonably affect groundwater resources or other users. Vanderpool must be required to submit a complete application to amend the permit, should it want more than 28 acre-feet per well.

B. Any permitted production limit of more than 10 acre-feet per well requires conditions monitoring irrigation practices on steep slopes to prevent runoff, erosion, and waste.

Following similar logic, should the District set production limits above 10 acre-feet and up to 28 acre-feet, as the GM recommends as one alternative, conditions must also be imposed on the permits that are designed specifically to help remedy the failure by the Applicant and the evidentiary record to show any more than 10 acre-feet could be put to beneficial use without waste. The GM has proposed, as one condition of a permitting decision, the condition to ensure that erosion and runoff of water from irrigation use are limited. BCA asserts that this condition is required should the permits be granted for any

more than 10 acre-feet per well and up to 28 acre-feet per well. To achieve compliance, this permit condition should require specifically that Vanderpool track and report on a monthly basis the quantity of groundwater used for irrigation purposes and report the number of acres on which irrigation is occurring. The GM must also be permitted to inspect irrigation practices at any time and request additional information necessary to ensure erosion and runoff are limited and Vanderpool is avoiding waste. Finally, this condition would not be sufficient beyond 28 acre-feet per well to ensure beneficial use without waste. Vanderpool must be required to submit a complete application to amend the permit, should it want more than 28 acre-feet per well.

C. Any "phasing in" of additional pumping must be capped at 56 acre-feet.

The GM's exceptions generally suggest one alternative to allow for phasing in of additional pumping based on Applicant providing verification to the General Manager of the need for additional amounts for domestic, livestock, or irrigation use. BCA respectfully maintains that the only phasing that is appropriate is the phasing from 10 acre-feet per well to 28 acre-feet per well, subject to the Applicant agreeing to comply with the conditions previously described herein. However, no permit should be issued to the Applicant for more than 28 acre-feet per well without being subject to the substantive and procedural requirements applicable to a permit amendment found in the Texas Water Code, the District's rules, and the District's Management Plan.

Importantly, none of these authorities prevent Vanderpool from seeking an amendment to request additional groundwater production at any time, and therefore, Vanderpool would not be prejudiced by the decision to limit its first permit to an initial

phase of production. To the contrary, other property owners who have a property right in the groundwater beneath their land or who have wells in the vicinity of Vanderpool's wells would be prejudiced by a "phased" permit that authorizes the Applicant or the GM to claim or grant more groundwater in an administrative fashion rather than by following those procedures that allow for affected persons to participate in the decision-making. *See* Tex. Water Code § 36.4051. Because the rights of those individuals would be prejudiced, any phased approach approved by the District must be limited to a maximum production of 28 acre-feet per well.

D. Other permit conditions necessary for absolute clarity and compliance.

Because one challenge of this proceeding was that information appearing in the Applications themselves was later contradicted by witnesses for the Applicant, additional permit terms are necessary to provide clarity and ensure compliance with the District's rules. One example that the GM references in his exceptions is that the Applications reference only the 317-acre track on which the requested production is based; however, during the course of the contested case hearing, Applicant indicated its intent to use the groundwater on both its 317-acre tract and the adjacent 310-acre tract. Because District rules tie the maximum amount of groundwater that may be produced to an applicant's acreage of land, then the permit should be clear whether it is based on only the 317-acre tract or also the adjacent 310-acre tract. Any permits granted should also specify on which tracts the groundwater may be used in order to ensure enforceability with the conditions regarding monitoring irrigation practices to prevent runoff, erosion, and waste. In addition,

any permit should also clearly indicate that no groundwater will be used directly or indirectly to fill any pond, lake, or reservoir, consistent with the GM's recommendation.

III. REPLY TO THE GENERAL MANAGER'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Also, in the interest of clarity and consistency, BCA maintains that the primary two issues in this matter are dispositive: (1) whether the Applicant has demonstrated that the requested 200 acre-feet will not unreasonably affect existing groundwater resources and permit holders; and (2) whether the Applicant has demonstrated that the proposed use of water is dedicated to a beneficial use without waste. The Applicant has failed to meet its burden of proof with regard to both inquiries. Therefore, the analysis may stop there. Though the other issues are certainly intertwined, as the GM's exceptions acknowledge in pointing out that with each permitting decision, the District must weigh the goals of its own Management Plan, its obligations to protect property rights and to balance conservation with development, while relying on best available science. The District does not need to reach the remaining findings and conclusions on the issues that are not necessary to support denial or a limitation from the requested 200 acre-feet total. Therefore, for the sake of clarity and consistency, BCA recommends that the District limit its Findings of Fact and Conclusions of Law to only those in the GM's exceptions listed below and amended as follows:

- Limit to FOFs 1- 49, 76-83.

- Amend FOF 36: ". . . . The ~~actual~~ assumed storativity number used by Mr. Thornhill was unrealistic and 5 to 25 times higher than the reported values for the Middle Trinity Aquifer in published scientific literature. . . ."
- Amend FOF 41 to add: "Mr. Rice also predicted drawdown of 261 feet at the Parker property line."
- Amend FOF 44: "The evidence establishes that the predicted effect on the Albritton Family Management property well and the aquifer at the Parker property line from Applicant's proposed pumping ~~may be~~ is unreasonable."
- Limit to COLs 1-11, 23-27.
- Amend COL 27: After weighing the factors under Texas Water Code section 36.113(d) and the District Rules and the District Management Plan, the District ~~should~~ approves the Applications for 10 acre-feet for the House Well and 10 acre-feet for the Barn Well, with the following special conditions:
    (a) the Permittee may not use any groundwater produced subject to this permit to directly or indirectly to fill any pond, lake, or reservoir;
    (b) the production limits in this permit are based on Permittee's 317-acre tract;
    (c) the Permittee must conduct another water quality test and submit information acceptable to the General Manager that confirms the wells have been drilled and cased properly, such that groundwater quality will be protected;

(d) the Permittee must install a surface water monitoring system acceptable to the General Manager to provide information that would aid in evaluating whether there is any impact of pumping from the wells on known nearby springs and surface waters;

(e) upon agreement to comply with each of the following conditions, the Permittee is authorized to increase production to 28 acre-feet per well:

i. the Permittee will install monitoring equipment acceptable to the General Manager to monitor the aquifer conditions at the location of the wells and on at least one location representative of neighboring properties;

ii. the Permittee will track and report on a monthly basis the quantity of groundwater used for irrigation purposes and report the number of acres on which irrigation is occurring. The GM may inspect irrigation practices at any time and request additional information necessary to ensure erosion and runoff are limited and Permittee is avoiding waste of groundwater.

IV. CONCLUSION

For all these reasons, BCA respectfully requests that the Board deny Vanderpool Management, LP's Applications, because the Applicant has not met its burden and has not demonstrated that its Applications meet the applicable statutory and regulatory requirements. However, should the Board grant any permits, BCA maintains that the

permits must be either limited to 10 acre-feet per well or limited to no more than 28 acre-feet per well and subject to the conditions described herein. Protestant further requests such other and further relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing document was served by electronic service to the following parties, November 8, 2024.

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