

TERRILL & WALDROP

ATTORNEYS and COUNSELORS

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

April 13, 2020

VIA EMAIL

Ms. Barbara Boulware-Wells
General Counsel
Post Oak Savannah Groundwater Conservation District
The Knight Law Firm LLP
223 West Anderson Lane, Suite A-105
Austin, Texas 78752
barbara@cityattorneytexas.com

Re: Application to Amend Vista Ridge Drilling and Operating Permit
No. POS-D&O/A&M-001d (“Operating Permit”) and
Transport Permit No. POS-T-0001d (“Transport Permit”)

Ms. Boulware-Wells:

On behalf of Blue Water Vista Ridge LLC (“Blue Water”), as permit administrator for Vista Ridge LLC (“Vista Ridge”), this letter responds to the April 13, 2020 correspondence of Mr. Ernst Martzen, counsel for Judith McGeary, in which Mr. Martzen objects to portions of the draft minutes of the Post Oak Savannah Groundwater Conservation District’s (the “District”) February 13, 2020 Public Hearing in the above-referenced permit amendment application.

Mr. Martzen’s objection should be overruled and the draft minutes should be approved by the District Board as written because they constitute an accurate summary of what transpired during the hearing. As the draft minutes correctly reflect, Ms. McGeary’s February 7, 2020 letter and accompanying “reports” were emailed to the District Board of Directors but the letter was not emailed to me, counsel for the applicant. Importantly, Ms. McGeary’s correspondence objected to various aspects of Blue Water’s permit applications in the context of a contested permit application hearing that had been continued from October 3, 2019. The draft minutes accurately reflect that Ms. McGeary is a licensed attorney and that the letter attempted to circumvent the hearing process by improperly presenting evidence into a case pending before the Board while avoiding subjecting that evidence to interrogation, cross-examination and rebuttal. The draft hearing minutes accurately state that the motion objected to such an attempt to influence the board outside of the proper hearing process and that such attempt was not ethically proper. Finally, the draft minutes accurately report that President Youngblood granted the motion.

If the draft minutes could be faulted, it would not be for a lack of accuracy but for understatement regarding the nature of Ms. McGeary’s conduct which threatened to undermine the procedural and evidentiary integrity of the formal judicial proceeding through prohibited *ex parte* communications while attempting to deprive Blue Water, the applicant, of a meaningful opportunity to respond. As a licensed attorney, Ms. McGeary either knew, or should have known,

that permit application hearings are formal judicial proceedings governed by Texas Water Code Chapter 36 and the District's rules.

The premise of Mr. Martzen's letter, that Ms. McGeary was acting only in her personal capacity as a citizen of Milam County and member of the public, was not serving as an attorney or advocate on behalf of a client, and therefore not subject to the attorney ethics rules, is not accurate. Ms. McGeary's letter unequivocally constituted legal advocacy. The letter consisted of no less than 13 pages of legal argument, replete with dozens of references to specific provisions of the District Rules and the Texas Water Code, links to extra-record articles and other third-party hearsay, and copies of alleged "reports" and "studies." Nor was the letter simply signed by Ms. McGeary in her personal capacity as a landowner in Milam County, as Mr. Martzen attempts to argue. Rather, Ms. McGeary submitted her letter "on behalf of the members of the Farm and Ranch Freedom Alliance who live in this District" in her capacity as that organization's executive director. Of course, Ms. McGeary was well aware that the public comment portion of the hearing had concluded months prior to the February 13, 2020 continuation of the public hearing and the Board president had made this point abundantly clear prior to the resumption of the hearing. Thus, regardless of whether Ms. McGeary was acting as an attorney, she was attempting to improperly influence the Board while preventing the applicant from developing a response.

Mr. Martzen next argues that even if Ms. McGeary was subject to the attorney ethics rules, her actions did not constitute a violation "under the circumstances of this case" on the ground that the Board's conduct of a public contested case hearing was somehow not the type of proceeding to which the attorney ethic rules apply. Essentially, Mr. Martzen argues without explanation that this Chapter 36 contested case hearing is more akin to a zoning issue and that the rules in groundwater conservation districts do not specifically prohibit direct presentation to the board. In making this unexplained conclusory argument, Mr. Martzen wrongly characterized this permit application "uncontested." This was not simply an uncontested administrative matter before the board in the course of a regular monthly meeting. This was a contested permit amendment application in which the District Board was acting as the judicial decision-maker under its Chapter 36 authority.

Mr. Martzen next asserts incorrectly that Ms. McGeary was never told that her practice of submitting similar information to the Board was wrong or otherwise questioned. Mr. Martzen's assertion is belied by the proceedings in Blue Water's previous permit amendment application proceeding, which occurred in 2017. In Blue Water's April 17, 2017, response to similar attempts by Ms. McGeary to inject legal arguments into a judicial proceeding to which she was not a party, Blue Water pointed out that Ms. McGeary's actions in that prior proceeding were likely in violation of District Rule 14.3(3), which authorizes *only* "an affected person that has filed a timely notice and appearance regarding an application for a permit to appear, *present evidence, exhibits, testimony or make an oral presentation.*" (emphasis added). Thus, this behavior is part of a pattern or practice. While Blue Water appreciates that a person may be "passionate about important cause," that passion cannot serve as an excuse for not following the District's rules, nor for undermining the integrity of judicial proceedings on Blue Water's permit application.

Ms. Boulware-Wells
April 13, 2020
Page 3

Mr. Martzen's objection on behalf of Ms. McGeary is not raised on the basis that the minutes are false or less than complete. Rather, Mr. Martzen is asking the Board to recast the events of the evening of February 13, 2020 in a more favorable, yet less factual light. That effort should be rejected.

Sincerely,



Paul M. Terrill III
TERRILL & WALDROP

cc: Ernst M. Martzen, Counsel for Judith McGeary
Ross Cummings, Blue Water Vista Ridge, LLC
Hon. Steve Young, Milam County Judge
Hon. Keith Schroeder, Burleson County Judge