UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

BLUE WATER 130 PROJECT, L.P., Plaintiff, v. POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT; GARY WESTBROOK, in his official capacity as General Manager of Post Oak Savannah Groundwater Conservation District; and JAY WILDER, JOHN REDINGTON, BECKY GOETSCH, BRIAN WALLIS, JEFFREY ZGABAY, LEE PELZEL, ROBY JEKEL, BUSTER EVERS, ED SAVAGE, and KIT WORLEY, in their official capacities as Directors of Post Oak Savannah Groundwater Conservation District, Defendants.	§ § § § § § § § § § § § § § § § §	Cause No. 6:26-cv-00585

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Plaintiff Blue Water 130 Project, L.P. ("Plaintiff" or "Blue Water") and files this Original Complaint against Defendants Post Oak Savannah Groundwater Conservation District ("Post Oak GCD" or the "District") and against its General Manager and the members of its Board of Directors in their official capacities (the "Officials") (collectively "Defendants"), and alleges as follows:

I. INTRODUCTION

1. This lawsuit challenges the ongoing unlawful and *ultra vires* adoption, application, and enforcement of rules by the Defendants. These actions exceed Defendants' lawful authority

by imposing excessive fees that violate statutory limits and function as an unauthorized tax on the exercise of Blue Water's private property rights.

2. Under well-settled Texas law, use of one's groundwater is a constitutionally-protected private property right. Landowners have a vested right to the groundwater beneath their land, subject only to reasonable, non-discriminatory regulation by groundwater conservation districts. *See, e.g.*, TEX. WATER CODE § 36.002(a) ("[A] landowner owns the groundwater below the surface of the landowner's land as real property."); *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 832-33 (Tex. 2012) ("Groundwater rights are property rights subject to constitutional protection."). Restrictions placed on an owner's vested rights to produce groundwater can result in a taking of private property that requires the payment of just compensation. *See Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118, 139-44 (Tex. App.—San Antonio 2013, pet. denied) (groundwater district's restriction of groundwater production was a taking, requiring payment of just compensation). Blue Water holds those same property rights through its valid leasehold interests from landowners within the District and has lawfully developed those rights into a major water infrastructure project (the "130 Project") which delivers groundwater by underground pipeline to multiple growing communities in the region of Austin, Texas. The 130 Project was developed in full reliance on the rights granted by Texas law.

3. Over the past 15 years, Blue Water has paid the District millions of dollars in production and export fees. In recent years, these fees have increased dramatically—not to fund legitimate operational functions, but to support the District's numerous and expansive wealth redistribution programs. Rather than limiting its fee collection to reasonable operating costs, the District has accumulated an unspent cash surplus of millions of dollars and has used these surplus funds to pay out large amounts to private individuals, utilities, and municipalities in its area. This

is not regulation, and it is not legal. It is an unauthorized tax levied on a constitutionally-protected property right. By this suit, Blue Water challenges the District's unlawful fee scheme and seeks relief from a regulatory regime that has become untethered from the law.

4. Blue Water seeks declaratory and injunctive relief, as well as compensatory damages arising from Defendants' violations of federal constitutional rights protected by the Fifth and Fourteenth Amendments and enforceable through 42 U.S.C. § 1983, and also arising from Defendants' violations of the Texas Constitution and Texas statutory law.

II. PARTIES

4. Plaintiff Blue Water 130 Project, L.P. is a Texas limited partnership with its principal place of business in Austin, Texas.

5. Defendant Post Oak Savannah Groundwater Conservation District is a groundwater conservation district organized under the laws of Texas pursuant to Article XVI, § 59 of the Texas Constitution and Chapter 8865 of the Texas Special District Local Laws Code. The District is a political subdivision of the State of Texas located in and exercising jurisdiction over all of Milam County and a portion of Burleson County, Texas. Post Oak GCD is a "person" subject to suit under 42 U.S.C. § 1983 and is not an arm of the state entitled to Eleventh Amendment immunity. *See Stratta v. Roe*, 961 F.3d 340, 350-56 (5th Cir. 2020). Post Oak GCD may be served with process via its General Manager at its principal office at 310 East Avenue C, Milano, Texas 76556.

6. Defendant Gary Westbrook is the General Manager of Post Oak GCD and is sued in his official capacity. Mr. Westbrook may be served at Post Oak GCD's principal office at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

7. Defendant Jay Wilder is a Director of Post Oak GCD and the President of the Board of Directors, and is sued in his official capacity. Mr. Wilder may be served via the General

Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

8. Defendant John Redington is a Director of Post Oak GCD and the Vice President of the Board of Directors, and is sued in his official capacity. Mr. Redington may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

9. Defendant Becky Goetsch is a Director of Post Oak GCD and the Secretary and Treasurer of the Board of Directors, and is sued in her official capacity. Ms. Goetsch may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else she may be found within or without the State of Texas.

10. Defendant Brian Wallis is a Director of Post Oak GCD and is sued in his official capacity. Mr. Wallis may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

11. Defendant Jeffrey Zgabay is a Director of Post Oak GCD and is sued in his official capacity. Mr. Zgabay may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

12. Defendant Lee Pelzel is a Director of Post Oak GCD and is sued in his official capacity. Mr. Pelzel may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

13. Defendant Roby Jekel is a Director of Post Oak GCD and is sued in his official capacity. Mr. Jekel may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

14. Defendant Buster Evers is a Director of Post Oak GCD and is sued in his official capacity. Mr. Evers may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

15. Defendant Ed Savage is a Director of Post Oak GCD and is sued in his official capacity. Mr. Savage may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

16. Defendant Kit Worley is a Director of Post Oak GCD and is sued in his official capacity. Mr. Worley may be served via the General Manager at 310 East Avenue C, Milano, Texas 76556, or wherever else he may be found within or without the State of Texas.

III. JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343, because this action is brought to enforce Blue Water's civil rights under 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendments of the United States Constitution. Defendants have no Eleventh Amendment immunity against Blue Water's claims in this suit. *See Stratta*, 961 F.3d at 350-56 (holding Texas groundwater conservation districts are not "arms of the state" entitled to Eleventh Amendment immunity and may be sued under § 1983).

18. This Court also has jurisdiction over Blue Water's claims for declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, because an actual, justiciable controversy exists between the parties concerning Defendants' ongoing statutory and constitutional violations, and Blue Water seeks a declaration of its rights and Defendants' obligations under federal and state law.

19. This Court has supplemental jurisdiction over the causes of action arising under Texas law under 28 U.S.C. § 1367.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), because Post Oak GCD has its principal office or place of business in Milam County, Texas, which is within the Waco Division of the Western District of Texas pursuant to 28 U.S.C. § 124(d)(2). Moreover, a substantial part of the events or omissions giving rise to Blue Water's claims occurred within the boundaries of the Western District of Texas, including the Waco Division thereof.

IV. CAUSES OF ACTION

21. In Texas, it is settled law that "a landowner owns the groundwater below the surface of the landowner's land as real property." TEX. WATER CODE § 36.002(a); *see Day*, 369 S.W.3d at 833 ("Groundwater rights are property rights subject to constitutional protection."). These real property rights in groundwater "entitle the landowner" to "drill for and produce the groundwater below the surface of real property." TEX. WATER CODE § 36.002(b)(1).

22. Blue Water holds extensive groundwater rights for the production of municipal water supply from the Simsboro aquifer. Blue Water's groundwater rights encompass thousands of acres and provide the basis for District Drilling and Operation Permit No. POS-D&O/A&M-0001a and District Transport Permit No. POS-T-0001a, which authorize a total of 20,000 acre-feet of annual production from the Simsboro formation of the Carrizo-Wilcox aquifer, and transportation thereof. These underlying groundwater rights and permits, and the supporting transportation system, are the product of substantive economic investment over many years, including a 53-mile water transmission pipeline to Manor, Texas, resulting in investment-backed expectations.

23. Post Oak GCD is a groundwater conservation district existing pursuant to Article XVI, § 59 of the Texas Constitution, created initially under the Texas Water Code by the Texas Legislature in 2001, which provisions of its enactment were later amended and codified in Chapter 8865 of the Texas Special District Local Laws Code.

24. The District is a creature of statute, with only the limited powers that the Texas Legislature has "conferred upon it in clear and unmistakable language." *Pub. Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 315 (Tex. 2001); *see Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940) ("The powers of such districts are measured by the terms of the statutes which authorized their creation, and they can exercise no authority that has not been clearly granted by the legislature.").

25. Post Oak GCD was generally granted "the rights, powers, privileges, functions, and duties provided by the general law of this state, including Chapter 36, Water Code." TEX. SPEC. DIST. LOC. LAWS CODE § 8865.101. However, this general grant of authority is subject to specific limitations. For example, § 8865.152 states, "The district does not have the authority granted by Sections 36.020 and 36.201-36.204, Water Code, relating to taxes." *See id.* § 8865.152. That means the Post Oak GCD is specifically *prohibited* from assessing a tax.

26. Because the District has exceeded its statutory authority in assessing fees, and is expressly prohibited from levying taxes, Blue Water is entitled to prospective declaratory and injunctive relief against the Officials to compel compliance with the statutory limitations.

27. Blue Water is further entitled to monetary relief from the District itself for the excess fees unlawfully collected. Blue Water's claims for monetary damages are independently actionable under 42 U.S.C. § 1983, which provides an independent federal statutory basis for recovering money damages arising from constitutional violations. Under § 1983, Blue Water is entitled to recover both prospective injunctive relief and backward-looking money damages for the excess fees unlawfully collected.

28. The fee schedules and programs challenged herein were adopted by the District's Board of Directors as official District policy. The Board members are the final policymakers for

the District with respect to the adoption and implementation of fee schedules, program eligibility criteria, and expenditure of District funds. The challenged fee assessments and spending programs are implemented by the General Manager pursuant to these official Board policies.

A. The District's Fees Exceed the Statutory Maximum.

29. Post Oak GCD's authority to impose production and export fees is governed by its enabling legislation and select provisions of Texas Water Code chapter 36.

30. According to the District's enabling legislation, the production fees the District may assess are capped based on the volume of groundwater actually *used*. TEX. SPEC. DIST. LOC. LAWS CODE § 8865.151(b) ("Fees may not exceed … 17 cents per thousand gallons for water used…."). That cap is further restricted in the event export fees are also charged. Unless "negotiated" otherwise with the permittee, the *combined* production and export fees may not exceed 17 cents per thousand gallons of "water used." *Id.* § 8865.151(c).

31. Blue Water holds two permits from the District. The first authorizes Blue Water to produce up to 20,000 acre-feet of groundwater per year (6,517,020,000 gallons per year). The second authorizes Blue Water to export (out of the county) such produced water.

32. The District has, for many years, charged Blue Water production and export fees on the basis of the full amount it is *authorized* to produce and export, but has not capped those fees such that they do "not exceed" 17 cents per thousand gallons of "water used" as required by its enabling legislation. That critical failure has resulted in the District's assessing annual fees against Blue Water in violation of Texas statute.

33. For example, in 2023, since the District was subject to the $0.17 per 1,000 gallons combined cap from its enabling legislation, the most the District could charge Blue Water based on actual usage was $240,070.94:

$$1{,}412{,}182{,}000 \text{ gallons} \times \$0.17 \;/\; 1{,}000 = \$240{,}070.94.$$

Instead, in 2023, the District assessed $736,423.32, nearly triple the fees authorized by its enabling legislation. Since 2016, the District exacted from Blue Water about $4 million dollars in unauthorized fees, as shown in the following chart:

	Blue Water Gallons Produced/Transported	District Fees Assessed	Max allowable (17 cents/1000 water used)	Fees exacted in excess of statutory authority
2016	564,499,710.50	$ 456,191.40	$ 95,964.95	$ 360,226.45
2017	756,415,848.10	$ 562,093.04	$ 128,590.69	$ 433,502.35
2018	764,587,000	$ 553,946.76	$ 129,979.79	$ 423,966.97
2019	782,931,300	$ 751,629.70	$ 133,098.32	$ 618,531.38
2020	1,100,101,000	$ 736,423.32	$ 187,017.17	$ 549,406.15
2021	938,130,500	$ 736,423.32	$ 159,482.19	$ 576,941.13
2022	1,266,732,000	$ 736,423.32	$ 215,344.44	$ 521,078.88
2023	1,412,182,000	$ 736,423.32	$ 240,070.94	$ 496,352.38

34. Critically, throughout the relevant period, the District assessed the vast majority of its fees not on groundwater Blue Water actually produced, but on water that remained in the ground. Between 2016 and 2023, the District based its assessments on Blue Water's annual authorization to produce 6,517,020,000 gallons of groundwater—more than 52.1 billion gallons over the eight-year period—even though Blue Water actually produced only approximately 7.59 billion gallons. Consequently, approximately 44.55 billion gallons, or *more than 85%* of the groundwater on which the District assessed fees, was neither produced nor transported. Put differently, the District collected substantially more in fees attributable to groundwater that remained in the aquifer than to groundwater Blue Water pumped.

35. Effective September 1, 2023, the Legislature amended Texas Water Code § 36.122 to provide that a district governed by a special law concerning an export fee or surcharge for water exported from the district may elect to assess such fees either in accordance with its special law or pursuant to Texas Water Code § 36.122(e) and (e-1). Section 36.122(e-1) states that, for a fee-based district, an export fee may not exceed "the greater of 20 cents for each thousand gallons or

a 50 percent surcharge, in addition to the district's production fee, for water exported from the district." *See* TEX. WATER CODE § 36.122(e-1). Notably, Texas Water Code chapter 36 also limits fees based on water used, not based on water that could have been used. *See id.* § 36.122(e) (capping export fees based on the quantity of "water exported"), § 36.205(c) (capping production fees based on the quantity of "water used").

36. In 2024, Post Oak GCD increased its fee schedule based on permitted volumes, charging $0.018 per 1,000 gallons permitted for production and $0.12 per 1,000 gallons permitted for export. Applying those rates to Blue Water's full permitted volume, the District assessed $117,306.36 in production fees and $782,042.40 in export fees, for a total charge of $899,348.76 in 2024. Blue Water actually produced and exported 1,566,522,220 gallons—less than one-quarter of the permitted volume. Because the District calculated its fees based on the total volume permitted, as opposed to water used, the effective rate Blue Water paid was $0.574 per 1,000 gallons actually used. This amount exceeds the statutory authority granted to the District whether pursuant to its enabling legislation or Texas Water Code chapter 36.

37. In 2025, Post Oak GCD significantly increased its fee schedule. Beginning in January of 2025, Post Oak GCD assessed $0.03 per 1,000 gallons permitted for production and $0.20 per 1,000 gallons permitted for export. Applying those rates to Blue Water's full permitted volume the District assessed $195,510.60 in production fees and $1,303,404.00 in export fees, for a total charge of $1,498,914.60 in 2025. Blue Water actually produced and exported 1,630,911,000 gallons—just one-quarter of its permitted volume.

38. Under chapter 36, the most the District could lawfully collect in production fees based on actual usage was $10 per acre-foot for water used. *See* TEX. WATER CODE § 36.205(c)(2) (capping production fees at $10 per acre-foot payable annually for water used).

39. Meanwhile, under its enabling legislation, no fees—production or export—could exceed 17 cents per thousand gallons of water used. Thus, for 2024 and 2025, the District exacted about $1.7 million dollars in unauthorized fees as shown below.

	Blue Water Gallons Produced/Transported	District Fees Assessed	Transport fee max (17 cents/1000 water used)	Ch. 36 Production Cap ($10/AF)	Total Fees Authorized	Fees exacted
2024	1,566,522,220	$899,348.76	$266,308.78	$48,080.00	$314,388.78	$584,959.98
2025	1,630,911,000	$1,498,914.60	$277,254.87	$50,050.00	$327,304.87	$1,171,609.80

40. The District's pattern and practice of charging both production fees and export fees based on the full amount of water for which the permittee is *permitted* without accounting for statutory caps on actual use violates the plain language of both the Texas Water Code and the District's enabling legislation. By charging fees in excess of the statutory maximum, Defendants have acted *ultra vires* and outside the scope of their lawful authority. Blue Water is entitled to declaratory and injunctive relief requiring the District to calculate its fees in accordance with the statutory limitations, and to monetary relief for the excess fees unlawfully collected.

B. The District's Fees Are Unreasonable and Unconstitutional.

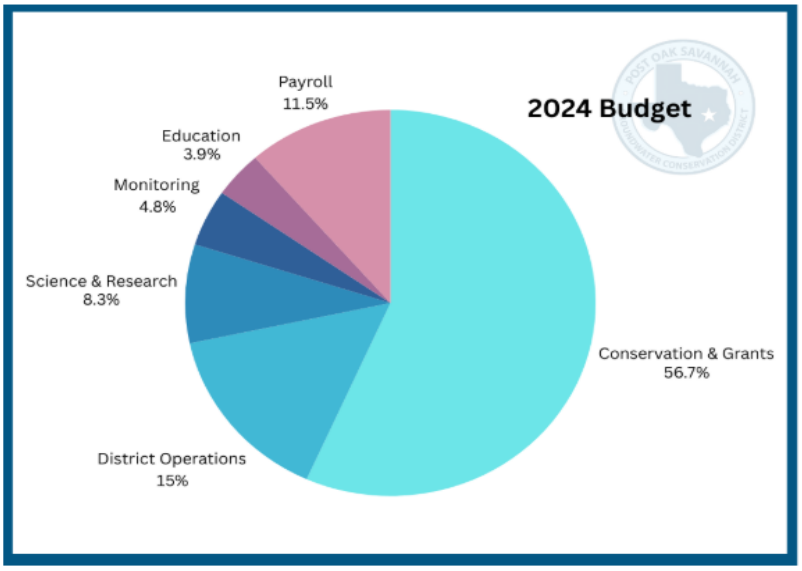
41. In addition to assessing fees far above the statutory maximum, for years Post Oak GCD has collected revenue far in excess of its operational needs, and then sought to justify that over-collection to fund increasingly expansive cash giveaway programs. The financial burden of this unauthorized revenue generation and wealth redistribution has fallen entirely on permittees like Blue Water.

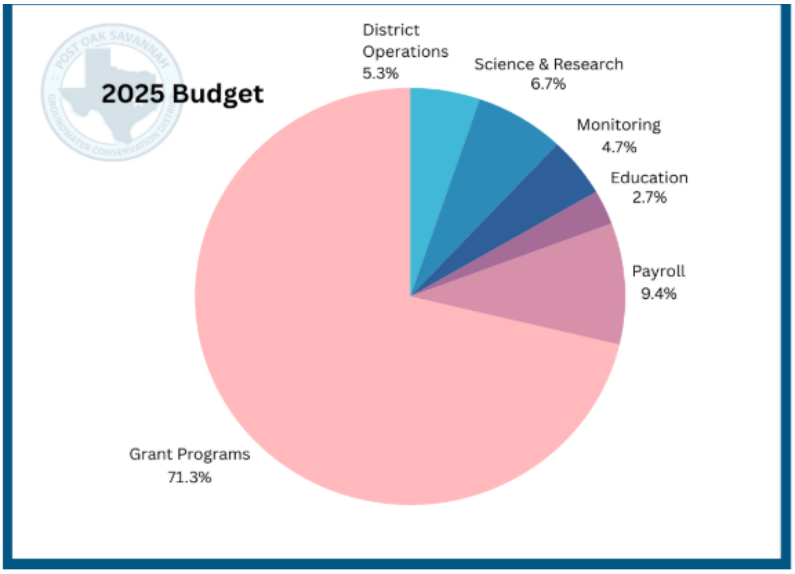
42. According to financial information published by the District, the District maintains an unspent cash surplus in the millions of dollars—a reserve that further demonstrates its fees are not tied to regulatory costs but to revenue generation. For example, according to the District's

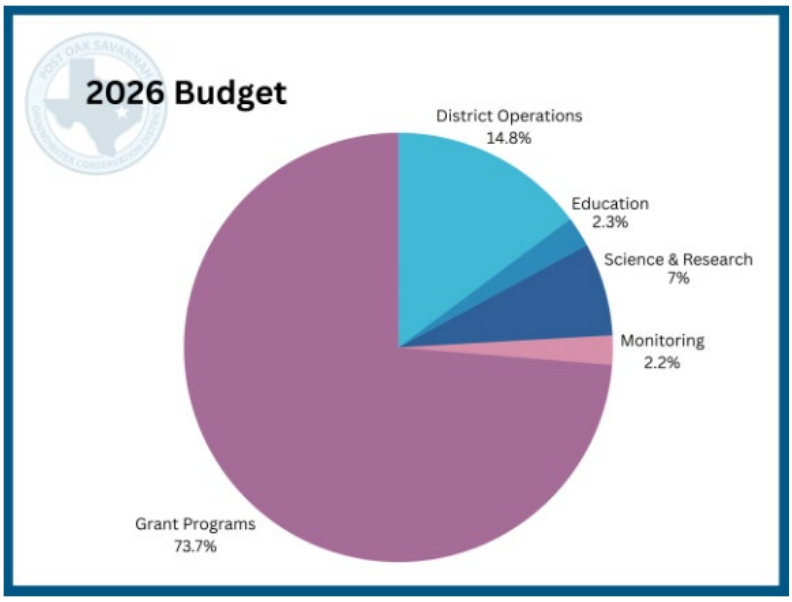
Annual Financial Report for the fiscal year ending December 31, 2025, the District generated $8,148,742.08 in service fees and other revenues during 2025. The same report indicates that the District ended 2025 with a net position of $5,882,536.77, a 9.2% increase over the prior year. Yet rather than reducing fees to match its operational costs, the District has expanded discretionary spending to justify continued excessive fee collection. These discretionary programs include:

> Rainwater Harvesting Rebate Program (RHR): Provides a single rebate per household annually—up to $5,000—to subsidize private rainwater collection infrastructure.
>
> Aquifer Conservancy Program (ACP): Issues recurring cash payments to landowners—which include District officials themselves—regardless of their groundwater development prospects—in exchange for a promise not to produce or lease groundwater, including in cases where the land has little or no potential for commercial use. The stated purpose of the program is to conserve groundwater, but the actual purpose is to prevent water companies from leasing additional groundwater rights and developing new projects that would compete with the District's political objectives.
>
> Groundwater Conservation Grant Program (GCGP): Transfers up to $1 million annually to local utilities to fund discretionary infrastructure projects—such as water line replacements—without any clear standards, accountability, or performance measures to ensure groundwater conservation outcomes. These funds support utility maintenance obligations that would otherwise be funded through rates charged to each utility's own customers, providing localized financial relief rather than a measurable or broadly distributed public benefit.

43. According to the budget adopted by Post Oak GCD in 2024, these Conservation & Grant initiatives represented an enormous 56.7% of the District budget. In 2025, the percentage grew to a staggering 71.3% of the District budget—or $7,795,738.84. In 2026, the percentage increased yet again to 73.7%, meaning that at present nearly three-quarters of the District's entire budget is dedicated to these initiatives. The entire point of the excessive fees charged to Blue Water appears to be wealth distribution, forcing Blue Water to fund local utilities and private landowners—with even the District's general manager personally receiving such funds. The following charts, publicly available on the District's webiste, show the nature of the District's spending:


2024 Budget
Payroll
11.5%
Education
3.9%
Monitoring
4.8%
Science & Research
8.3%
Conservation & Grants
56.7%
District Operations
15%


2025 Budget
District
Operations
5.3%
Science & Research
6.7%
Monitoring
4.7%
Education
2.7%
Payroll
9.4%
Grant Programs
71.3%


2026 Budget
District Operations
14.8%
Education
2.3%
Science & Research
7%
Monitoring
2.2%
Grant Programs
73.7%

44. The allocation of the majority of the District's budget to discretionary programs—rather than core operational expenses—exceeds the District's statutory authority and unconstitutionally transforms what should be a cost-recovery mechanism into a revenue-generating scheme. The District's fees are not tied to actual conservation, permitting, and monitoring functions, but primarily to fund discretionary wealth-distribution programs having no connection to regulating Blue Water's permits or conserving the aquifer. The District's fees are not based on actual or anticipated withdrawals but are charged based on unused permitted volume, thereby punishing conservation and creating an economic incentive to maximize production.

i. *The District's unequal application of its ACP Program violates the Equal Protection Clause of the United States Constitution.*

45. The District's Aquifer Conservancy Program is a program under which the District financially compensates a landowner for agreeing, for a defined term, to refrain from selling, assigning, transferring, or otherwise permitting the use of their private property rights with respect to groundwater. Importantly, the landowner can designate "all or a portion" of their land to refrain from using the associated groundwater and be compensated therefor.

46. The District's differential treatment of Blue Water lacks any rational basis under the Equal Protection Clause. There is no rational basis to make the ACP program unavailable to *lessees* of groundwater rights.

47. Just like landowners who have not leased their groundwater rights, Blue Water holds private property rights in the groundwater in the District, and possesses the exclusive right to use, or to *refrain* from selling, assigning, transferring, or otherwise permitting the use of, said private property rights. Blue Water and landowners who participate in the ACP program are similarly situated in all material respects: both hold private property rights in groundwater; both have the legal capacity to refrain from using their groundwater; and both can contribute to the

District's stated conservation objectives by refraining from production. Yet, despite being similarly situated with respect to these vested property interests in groundwater, Defendants have intentionally treated Blue Water differently by limiting participation in the ACP to landowners. That disparate treatment is intentional, as the District desires to help residents of the District without helping outside business entities such as Blue Water, even though the impact on the aquifer from non-use of the groundwater is *identical*.

48. Defendants' disparate treatment of Blue Water lacks any rational basis and is not reasonably related to the stated purpose of the Program, which is to conserve groundwater by securing enforceable commitments to refrain from its production or transfer. Instead, Defendants reserve the financial incentives provided by the ACP program exclusively to "landowners," while simultaneously imposing fees on Blue Water based on authorized permitted amounts, irrespective of actual production. In other words, Defendants financially reward *one* class of owners of groundwater rights for nonuse of groundwater and financially burden another class of owners of groundwater rights for that nonuse. Such differential treatment of similarly situated persons violates the Equal Protection Clause of the Fourteenth Amendment and is actionable under 42 U.S.C. § 1983.

49. Blue Water has suffered actual damages as a result of the Defendants' deprivation of Blue Water's right to Equal Protection in the manner stated above. Had Blue Water been eligible to participate in the ACP program on the same terms as landowners, it could have received financial compensation from the District for Blue Water's nonuse of a portion of its permitted groundwater rights. Instead, Blue Water has been required to pay fees on its full permitted volume while being excluded from financial benefits extended to landowners who similarly refrain from groundwater use. Defendants' conduct violates the Equal Protection Clause of the Fourteenth

Amendment to the United States Constitution and is actionable under 42 U.S.C. § 1983. Blue Water is entitled to declaratory and injunctive relief, as well as compensatory damages and attorneys' fees pursuant to 42 U.S.C. § 1988.

ii. The District's fees are not reasonable.

50. Post Oak GCD's enabling act authorizes it to impose fees only to the extent those fees are "reasonable." TEX. SPEC. DIST. LOC. LAWS CODE § 8865.151(a) & (c). Post Oak GCD's fees are not reasonable in numerous respects.

51. The District's fees are not reasonable because they function primarily as a local revenue generation mechanism which far exceeds any legitimate regulatory need. Instead, the fees assessed far exceed the cost of operating the District, and are collected to fund third-party grants and projects. The resulting surpluses collected—now so large the District struggles to spend them—underscore the excess. It is not reasonable for a governmental entity to assess production and transport fees whose primary purpose is generating revenue for the benefit of third parties as opposed to District operations.

52. The District's fee structure is independently unreasonable because it assesses both production and transport fees based on permitted groundwater volume rather than the actual production or transport of groundwater. As a result, the amount assessed bears no relationship to the permittee's actual use of the aquifer or the activity purportedly being regulated. Moreover, by divorcing its fees from actual groundwater production and transport, the District eliminates *any* economic incentive to conserve groundwater and instead incentivizes permittees to maximize production in order to recover fees paid for groundwater that remains in the ground. A fee structure that penalizes conservation and incentivizes greater groundwater withdrawals is not reasonable as required by § 8865.151 and, therefore, exceeds the District's statutory authority.

iii. *The District's transport fee operates as an unauthorized prohibition on the transport of water.*

53. Texas Water Code § 36.122 establishes the Legislature's comprehensive framework governing the transfer of groundwater outside of a district. While the statute authorizes districts to regulate groundwater transfers and assess transport fees, it requires that in doing so, a "district must be fair, impartial, and nondiscriminatory." *See* TEX. WATER CODE § 36.122(q). Additionally, the statute prohibits a district from using export-fee revenue "to prohibit the transfer of groundwater outside of a district." *See id.* § 36.122(l). Post Oak GCD's transport-fee rules violate these statutory limitations.

54. Upon information and belief, the District's Aquifer Conservancy Program is funded in whole or in part by export-fee revenue and is designed to prevent or suppress out-of-district groundwater transfers by paying landowners to not lease their groundwater rights to entities like Blue Water that would export the groundwater. The District's General Manager has testified that the ACP was intentionally structured to "break up larger blocks of contiguous acreage and hopefully make it more difficult for larger projects to lease up larger amounts of land [and] to acquire larger permits." Using funds generated from transport fees to fund such a program is neither fair, impartial, nor nondiscriminatory. Moreover, because the ACP's purpose and effect is to suppress the supply of groundwater rights available for export projects, it violates Texas Water Code § 36.122(l) as a de facto prohibition.

iv. *The District's fees are an unconstitutional tax.*

55. Under well-established Texas law, a fee is a tax—and therefore subject to constitutional and statutory limitations—if its primary purpose is to raise revenue. *Lowenberg v. City of Dallas*, 261 S.W.3d 54, 57-58 (Tex. 2008); *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 461 (Tex. 1997); *Gatesco Q.M. Ltd. v. City of Houston*, 503 S.W.3d

607, 616 (Tex. App.—Houston [14th Dist.] 2016, no pet.). By contrast, if the charge is imposed for the primary purpose of regulation—even if it incidentally raises revenue—it may be characterized as a regulatory fee. *See Beckendorff v. Harris-Galveston Coastal Subsidence Dist.*, 558 S.W.2d 75, 80 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ ref'd n.r.e.). To distinguish regulatory fees from taxes, Texas courts apply the "primary purpose" test, examining whether the primary purpose of the assessment is regulation or revenue generation. The critical inquiry is whether the assessment raises revenue in excess of that reasonably needed for regulation, rather than merely funding the regulatory program. *See Tex. Boll Weevil*, 952 S.W.2d at 461.

56. In 2025, the District budgeted 73.7% of its total expenditures for discretionary "Conservation & Grant" programs rather than core regulatory operations. Such disproportionate allocation of fee revenue to non-regulatory purposes is the hallmark of an unconstitutional tax.

57. Additionally, the District calculates fees based on the total volume a permittee is authorized to produce or export, without regard to the actual volume of groundwater withdrawn or conveyed. Consequently, a permittee's financial liability remains the same whether it produces its full allocation or only a fraction thereof.

58. This structure eliminates any economic incentive to conserve groundwater, thereby defeating any claimed regulatory purpose. Because permittees such as Blue Water are assessed substantial fees on water they do not actually produce or export, they are economically compelled to *maximize* production in order to justify and offset the cost of fees assessed on unused volume. Thus, far from discouraging groundwater consumption, the District's approach penalizes conservation and incentives maximum production.

59. Moreover, the magnitude of the fees charged—exceeding statutory caps in multiple years—and the District's use of the revenue to fund rebates, incentives, grants, and other

non-operational programs further establish that the District's objective is not regulation, but revenue generation. *See Gatesco*, 503 S.W.3d at 616 ("The critical issue is whether the fee is intended to raise revenue in excess of that reasonably needed for regulation.").

60. By statute, Post Oak GCD does not have taxing authority. TEX. SPEC. DIST. LOC. LAWS CODE § 8865.152. Therefore, because—or to the extent that—Post Oak GCD's fees qualify as taxes, they are in violation of the Texas Constitution and exceed the District's express statutory authority.

61. Blue Water does not challenge the District's authority to impose reasonable fees tied to legitimate regulatory costs. Instead, Blue Water challenges only the specific fee scheme that: (1) exceeds special statutory caps; (2) charges Blue Water for water it does not use; (3) punishes conservation; (4) funds non-regulatory transfers to third parties; and (5) conditions the exercise of constitutionally-protected groundwater rights on payments lacking statutory authority, nexus, and proportionality. A ruling for Blue Water will not impair any district's ability to engage in legitimate regulation, but will ideally constrain groundwater conservation districts from imposing disguised taxes and transferring public funds to private individuals and entities without legal authority, as this District is doing.

v. *The District's fees violate the Texas Constitution's Gift Clause.*

62. Article III, § 52(a) of the Texas Constitution prohibits the gratuitous grant of public funds to private individuals or associations. As reaffirmed in *Borgelt v. Austin Firefighters Ass'n*, such an expenditure violates the Gift Clause unless it: (1) provides a public benefit; (2) has a predominant purpose of serving a legitimate public objective; and (3) is accompanied by sufficient government control to ensure the public purpose is accomplished. 692 S.W.3d 288, 301 (Tex. 2024).

63. Under the District's ACP, landowners located in Post Oak GCD who agree to receive public funds must commit not to lease or utilize their groundwater rights for specific purposes, including: (1) public water supply, (2) industrial use, (3) commercial purposes, (4) oil and gas hydraulic fracturing, and (5) agricultural irrigation.

64. However, the District imposes no requirement that a landowner participating in the ACP actually possess a viable opportunity to lease or produce groundwater for any of the prohibited purposes. In fact, even landowners' parcels that are rendered commercially nonviable due to District-imposed restrictions—such as spacing rules and contiguous acreage requirements remain eligible under the program. As a result, the District would disburse public funds in exchange for the relinquishment of purely theoretical development opportunities—many of which could never materialize under existing District rules or market conditions. Moreover, once disbursed, the funds may be spent by the recipient on *any* private purpose, and the District fails to retain control of the funds to ensure the asserted public purpose—groundwater conservation—is actually accomplished.

65. Upon information and belief, the District has paid ACP funds to landowners whose parcels are too small to satisfy the District's contiguous-acreage requirements for commercial groundwater production, landowners whose property lacks sufficient aquifer productivity for viable water supply projects, and landowners who have no realistic prospect of leasing to, or being approached by, commercial water developers. The identities and specific circumstances of such ACP recipients are within the exclusive knowledge and control of Defendants and will be established through discovery.

66. Similarly, the GCGP transfers significant funds annually to local utilities to fund their own utility work. The GCGP involves no clear standards, accountability, or performance

measures to ensure groundwater conservation outcomes. Utility maintenance costs are supposed to be funded by the utility ratepayers. Blue Water essentially is forced to be a special utility ratepayer, paying for utility systems from which it does not benefit, at rates that vastly exceed those of the utility customers themselves who do benefit therefrom. The program improperly uses public money to subsidize private infrastructure held by third-party utilities.

67. Collectively, these programs—ACP, GCGP, and likely others—violate Article III, § 52(a) of the Texas Constitution because they: (1) provide no clear public benefit in exchange for the expenditure; (2) serve the predominant purpose of benefiting private parties rather than accomplishing a legitimate public objective; and (3) involve no sufficient government control to ensure any public purpose is accomplished. *See id.* As a result, Post Oak GCD is engaging in the gratuitous transfer of public funds to private individuals and associations in violation of the Texas Constitution's Gift Clause.

vi. *The District's fees are a taking under the United States and Texas Constitutions.*

68. A landowner's vested ownership right in his groundwater is protected under both the U.S. and Texas Constitutions from being taken without payment of just and adequate compensation. U.S. CONST. amends. V & XIV; TEX. CONST. art. 1, § 17. In *Edwards Aquifer Authority v. Day*, the Texas Supreme Court confirmed that a landowner owns "the absolute title in severalty" to the groundwater "in place beneath his land" and that the ownership is a vested property right subject to constitutional protection against an uncompensated taking. 369 S.W.3d at 831-32, 837-38.

69. Post Oak GCD may not impose permit conditions that exact property—or its monetary equivalent—unless the condition bears an "essential nexus" to a legitimate government interest and is "roughly proportional" to the impacts of the proposed use. *Sheetz v. Cty. of El*

Dorado, 601 U.S. 267, 275 (2024) (holding the Takings Clause applies equally to legislative and administrative permit conditions); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 612-15 (2013) (extending *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), requirements to monetary exactions). Post Oak GCD's imposition of fees fails both prongs of this test.

70. Post Oak GCD's current regulatory scheme imposes production and export fees that lack an essential nexus to a legitimate government interest, because the fees are assessed based on total permitted amount, not actual groundwater production or export. A fee structure that punishes nonuse of a resource cannot have an essential nexus to a regulatory purpose of conserving that same resource. This irrational fee structure actively incentivizes permittees to maximize groundwater production to recoup the cost of fees already assessed on unused volume. Furthermore, the fees are not roughly proportional to any impact caused by Blue Water's actual groundwater production, because the fees are calculated without any individualized assessment of the actual volume of water Blue Water produces or exports, or any determination of the impact of that actual production on the aquifer.

71. Blue Water's production and export fees are imposed as conditions on the exercise of its private property rights. Nonpayment of the assessed fees would result in enforcement action by the District, including potential suspension, revocation, or non-renewal of Blue Water's permits, thereby preventing Blue Water from exercising its constitutionally-protected groundwater rights. Thus, the District conditions Blue Water's continued ability to produce and transport groundwater on payment of the challenged fees.

72. Defendants' conduct violates the Takings Clause of the Fifth Amendment, made applicable to the States through the Fourteenth Amendment, and is actionable under 42 U.S.C.

§ 1983. Blue Water is entitled to declaratory and injunctive relief, as well as just compensation and attorneys' fees pursuant to 42 U.S.C. § 1988. Defendants' conduct also violates Article I, § 17 of the Texas Constitution.

73. Blue Water is entitled to declaratory and injunctive relief, as well as compensation in an amount including, at a minimum, the production and export fees exacted and collected in excess of the District's statutory authority (as previously described).

74. In the alternative, even if Post Oak GCD's fees are not subject to the *Nollan/Dolan/Koontz* exaction framework, Blue Water asserts a regulatory takings claim under the *Penn Central* balancing test. *See Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978). Under *Penn Central*, a regulatory taking occurs when the economic impact on the claimant, interference with reasonable investment-backed expectations, and the character of the governmental action, taken together, constitute an impermissible burden on private property. Here, Blue Water has made a substantial economic investment over more than a decade in its groundwater rights, permits, and pipeline infrastructure, with the reasonable expectation that it would be able to exercise those constitutionally-protected property rights subject only to *reasonable*, non-discriminatory regulation. The District's fee structure imposes severe economic impact on Blue Water, requiring payment of fees totaling more than $3 million from 2023 through 2025 for water Blue Water did not produce or export, while simultaneously excluding Blue Water from conservation-incentive programs available to landowners. By charging fees disconnected from actual resource use and using the proceeds to fund programs that benefit politically-connected local interests, the District's actions demonstrate that the fees function as an impermissible appropriation of Blue Water's property rights rather than legitimate regulation. Blue Water is entitled to just compensation for this regulatory taking, including the return of the ultra vires

production and export fees previously assessed and collected in excess of the District's statutory authority.

V. RELIEF REQUESTED

75. As further described in the Prayer, Blue Water seeks all actual damages caused by Post Oak GCD's illegal overcharging of fees, illegal treatment of Blue Water, and unconstitutional takings. This includes overcharged fees exacted from Blue Water since 2016 (calculated above as $5,834,705.40).

76. Blue Water seeks declaratory and permanent injunctive relief to prospectively bind the Post Oak GCD Officials to charge production and export fees within their lawful limits.

77. Blue Water further seeks declaratory and permanent injunctive relief to prospectively prohibit the Post Oak GCD Officials from making payments to third parties under the ACP program, the GCGP program, and any other program in violation of the Texas Constitution.

78. Blue Water seeks recovery of its attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and, as applicable, Texas Civil Practice and Remedies Code § 37.009.

79. Blue Water reserves the right to seek exemplary damages to the extent permitted by applicable law based upon discovery of additional facts demonstrating that Defendants acted with malice, gross negligence, or reckless disregard for Blue Water's rights.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Blue Water 130 Project, L.P. prays that it have and recover from Defendants:

a. Actual damages incurred by Blue Water 130 Project, L.P. due to Defendant Post Oak Savannah Groundwater Conservation District's compelling Blue Water 130 Project, L.P. to pay production fees and export fees in excess of statutory limits;

b. Actual damages incurred by Blue Water 130 Project, L.P. due to Defendant Post Oak Savannah Groundwater Conservation District's compelling Blue Water 130 Project, L.P. to pay production and export fees to the extent they (1) were in excess of a reasonable charge for water production and export by Blue Water 130 Project, L.P., (2) constituted an unconstitutional tax on Blue Water 130 Project, L.P., or (3) constituted an unconstitutional taking of Blue Water 130 Project, L.P.'s property rights;

c. Actual damages incurred by Blue Water 130 Project, L.P. due to Defendant Post Oak Savannah Groundwater Conservation District's prohibiting Blue Water 130 Project, L.P. from participating in the Aquifer Conservancy Program;

d. Declaratory judgment that Defendants cannot charge Blue Water 130 Project, L.P. production fees in excess of $10 per acre-foot of groundwater annually used by Blue Water 130 Project, L.P.;

e. Permanent injunctive relief against Defendants from charging Blue Water 130 Project, L.P. production fees in excess of $10 per acre-foot of groundwater annually used by Blue Water 130 Project, L.P.;

f. Declaratory judgment that Defendants cannot charge Blue Water 130 Project, L.P. production and export fees combined in excess of 17 cents per 1,000 gallons of groundwater annually used by Blue Water 130 Project, L.P.;

g. Permanent injunctive relief against Defendants from charging Blue Water 130 Project, L.P. production and export fees combined in excess of 17 cents per 1,000 gallons of groundwater annually used by Blue Water 130 Project, L.P.;

h. Declaratory judgment that Defendants must cap Blue Water 130 Project, L.P.'s production and export fees based on gallons of groundwater used by Blue Water 130 Project, L.P.—not based on Blue Water 130 Project, L.P.'s permitted amounts;

i. Permanent injunctive relief against Defendants from charging or capping Blue Water 130 Project, L.P.'s production and export fees based on Blue Water 130 Project, L.P.'s permitted amounts;

j. Declaratory judgment that Defendants cannot pay third parties under the ACP program or, in the alternative, that Blue Water 130 Project, L.P. is entitled to participate in the ACP program as a lessee holding groundwater rights;

k. Permanent injunctive relief prohibiting Defendants from making payments to third parties under the ACP program or, in the alternative, that Defendants cannot exclude Blue Water 130 Project, L.P. from eligibility to participate in the ACP program as a lessee holding groundwater rights;

l. Declaratory judgment that Defendants cannot pay third parties under the GCGP program;

m. Permanent injunctive relief prohibiting Defendants from making payments to third parties under the GCGP program;

n. Prejudgment interest on Blue Water 130 Project, L.P.'s actual damages at the maximum rate allowed by law;

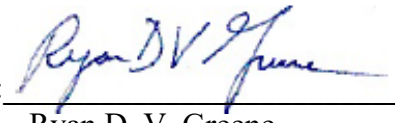
o. Blue Water 130 Project, L.P.'s attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and, as applicable, Texas Civil Practice and Remedies Code § 37.009;

p. Post-judgment interest on such actual damages, attorneys' fees, and costs at the maximum rate allowed by law;

q. Exemplary damages to the extent permitted by applicable law based upon discovery of additional facts demonstrating that Defendants acted with malice, gross negligence, or reckless disregard for Blue Water's rights; and

r. Any and all other just relief, at law or in equity, to which Plaintiff Blue Water 130 Project, L.P. may show itself to be entitled.

Respectfully submitted,

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