

## NOTICE OF OPEN MEETING

Notice is given that a **Regular Meeting** of the Board of Directors of the Barton Springs/Edwards Aquifer Conservation District will be held in **the District office**, 1124 Regal Row, Austin, TX, on **Thursday, May 12, 2011, commencing at 6:00 p.m.** for the following purposes, which may be taken in any order at the discretion of the Board:

Note: The Board of Directors of the Barton Springs/Edwards Aquifer Conservation District reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on this agenda, as authorized by the Texas Government Code Sections §551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development) 418.183 (Homeland Security). No final action or decision will be made in Executive Session.

1. **Call to Order.**
2. **Citizen Communications (Public Comments).**
3. **Routine Business.**
  - a. **Consent Agenda.** Note: These items may be considered and approved as one motion. Directors or citizens may request any consent item be removed from the consent agenda, for consideration and possible approval as an item of Regular Business.
    1. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000. **NBU**
    2. Approval of minutes from the April 28, 2011, Regular Meeting & Public Hearing. **Not for public view at this time**
  - b. **General Manager's Report.** Note: Topics discussed in the General Manager's Report are intended for general administrative and operational information-transfer purposes. The Directors will not take any action on them in this meeting, unless the topic is specifically listed elsewhere in this as-posted agenda.
    1. Personnel matters and utilization;
    2. Upcoming public events of possible interest;
    3. Aquifer conditions and status of drought indicators;
    4. Discussion related to current staff work areas and specific activities of staff teams and directors. Note: Individual topics listed below may be discussed by the Board in this meeting, but no action will be taken unless a topic is specifically posted elsewhere in this agenda as an item for possible action. A Director may request an individual topic that is presented only under this agenda item be placed on the posted agenda of some future meeting for Board discussion and possible action.
      - i. Update on recent team activities.
      - ii. Update on status of GMA-9 and GMA-10 Managed Available Groundwater (MAG) determinations by TWDB and related District assessments.

- iii. Update on the status of the evidentiary hearing process for TCEQ's recommendation concerning GCDs in the Hill Country PGMA. **Pg.10**

**4. Board Discussion and Possible Actions**

- a. Update, discussion, and possible action related to developments concerning the District's legislative agenda and other relevant legislative initiatives that potentially affect the District. **Pg. 14**
- b. Discussion and possible action on mediation concerning the Jeremiah Venture contested-case mediation. **NBU**
- c. Discussion and possible action related to follow-up activities associated with the Board's granting of Centex's request for reconsideration of recent District rule-making. **NBU**
- d. Discussion and possible action relating to *City of Kyle v. Goodman et al. and the Barton Springs Edwards Aquifer Conservation District, Cause No. 10-1267, 22<sup>nd</sup> District Court, Hays County, Texas.* **NBU**

**5. Adjournment.**

Came to hand and posted on a Bulletin Board in the Courthouse, Travis County, Texas, on this, the \_\_\_\_\_ day of May, 2011, at \_\_\_\_\_ .m.

\_\_\_\_\_, Deputy Clerk

Travis County, TEXAS

**Please note:**

This agenda and available related documentation have been posted on our website, [www.bseacd.org](http://www.bseacd.org). If you have a special interest in a particular item on this agenda and would like any additional documentation that may be developed for Board consideration, please let staff know at least 24 hours in advance of the Board Meeting so that we can have those copies made for you.

The Barton Springs/Edwards Aquifer Conservation District is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable accommodations and equal opportunity for effective communications will be provided upon request. Please contact the District office at 512-282-8441 at least 24 hours in advance if accommodation is needed.

**Item 1**  
**Call to Order**

**Item 2**

**Citizen Communications**

**Item 3**

**Routine Business**

**a. Consent Agenda**

- 1. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000.**
- 2. Approval of minutes from the April 28, 2011, Regular Meeting & Public Hearing.**

**BACK UP MATERIAL FOR**

**Routine Business 3a. Consent Agenda**

**Items 1 and 2 are**

**NOT FOR PUBLIC REVIEW AT THIS TIME**

## **Item 3**

### **Routine Business**

**b. General Manager's Report.** Note: Topics discussed in the General Manager's Report are intended for administrative and operational information-transfer purposes. The Directors will not deliberate any issues arising from such discussions and no decisions on them will be taken in this meeting, unless the topic is specifically listed elsewhere in this as-posted agenda.

- 1. Personnel matters and staff utilization**
- 2. Upcoming events of possible interest**
- 3. Aquifer conditions.**
- 4. Discussion related to current staff work areas and specific activities of staff teams and directors** Note: Individual topics listed below may be discussed by the Board in this meeting, but no action will be taken unless a topic is specifically posted elsewhere in this agenda as an item for possible action. A Director may request an individual topic that is presented only under this agenda item be placed on the posted agenda of some future meeting for Board discussion and possible action.
  - i. Update on recent team activities.**
  - ii. Update on status of GMA-9 and GMA-10 Managed Available Groundwater (MAG) determinations by TWDB and related District assessments.**
  - iii. Update on the status of the evidentiary hearing process for TCEQ's recommendation concerning GCDs in the Hill Country PGMA.**

**SOAH DOCKET NO. 582-10-5643  
TCEQ DOCKET NO. 2010-1040-MIS**

<b>GROUNDWATER CONSERVATION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DISTRICT CREATION</b>	<b>§</b>	
<b>RECOMMENDATION FOR THE HILL</b>	<b>§</b>	
<b>COUNTRY PRIORITY</b>	<b>§</b>	<b>OF</b>
<b>GROUNDWATER MANAGEMENT</b>	<b>§</b>	
<b>AREA: TRAVIS AND COMAL</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>COUNTIES</b>		

**AMENDED SOAH ORDER NO. 7  
GRANTING MOTION FOR ABATEMENT AND DENYING THE REQUEST FOR  
ALIGNMENT OF THE PARTIES**

The administrative law judges (ALJs) **GRANT** the parties' motions for abatement, subject to the terms of this order, and **DENY** the Executive Director's request for alignment of the parties at this time.

On April 6, 2011, the ALJs conducted a second prehearing conference in San Marcos, Texas, on the Executive Director's first revised proposal for the creation of a groundwater conservation district in Travis and Comal Counties. The ALJs heard State Representative Paul Workman's oral motion to abate these proceedings until the end of the 83<sup>rd</sup> Texas legislative session in early June 2013. In a letter dated April 15, 2011, Representative Workman filed his motion in writing with a certificate of service to the parties. On April 13, 2011, the ALJs issued Order No. 5, giving the parties until April 26, 2011 to file a response.

On April 26, 2011, Ted Stewart, Wesley Brockhoeft, E.M. Reimers Ltd., and Peacock Ranch (Southwestern County Landowners) filed a response supporting Representative Workman's motion.

On the same date, the Executive Director filed a response and a counter-motion for an abatement to end six months after the end of current abatement. (The parties have agreed to not to begin discovery in these proceedings until after the adjournment of the 82<sup>nd</sup> Texas regular legislative session on May 30, 2011.) The Executive Director sought the six-month period to



give the parties additional time to develop an acceptable local solution. Contingent on the granting of the Executive Director's counter-motion, the Executive Director proposed to take additional action by December 1, 2011 by: (1) filing a status report, (2) requesting an abatement for an additional period, (3) making a proposal for resuming the hearing, or (4) recommending an additional course of action based on the status of the case at the time. In addition, the Executive Director requested that the ALJs align the parties in keeping with the requirements of 30 TEX. ADMIN. CODE § 80.109(c).


Representative Workman's motion to abate, as modified by the Executive Director's counter-motion, is **GRANTED**. **All discovery and all other scheduled proceedings are CONTINUED to a date to be determined, including the prehearing conference (October 28, 2011) and the hearing on the merits (November 2-4, 2011).** The current abatement will be extended for a period of six months, through November 30, 2011. By December 1, 2011, the Executive Director will file a status report with the ALJs and with copies to the parties on the service list. The Executive Director's status report will include a written proposal for resuming the hearing process, including a proposed date for the hearing on the merits, plus any additional courses of action for the prosecution of its case. The Executive Director may include a request to extend the abatement. By December 12, 2011, any other party may file a response, including filing its own proposals.


The ALJs note that the persons and entities who were admitted as parties in response to the Executive Director's initial proposal in this case may no longer: (1) have a justiciable interest in the revised proposal or (2) wish to maintain party status. The result is that the service list under the first revised proposal may have become unnecessarily inflated, creating a burden on the parties who wish to comply with the service requirements. The Executive Director's filing of a second revised proposal may have the effect of creating an even more difficult burden.

Accordingly, if the Executive Director files a second revised proposal, the ALJs intend to dismiss this case from the docket of the State Office of Administrative Hearings and to order the Executive Director to file any revised proposal as a newly docketed matter. The ALJs do not take this action at this time, but notify the parties of a course of action that they are strongly considering.

Finally, the Executive Director's request that the ALJs align the parties is **DENIED** at this time. The provisions of 30 TEX. ADMIN. CODE § 80.109(c) authorize the ALJs to align the parties at the ALJs' discretion. Although the ALJs will order an alignment if necessary, the ALJs see no current benefit in making that ruling at this time. A party may seek or oppose alignment as part of its December 1 or 12, 2011, filing.

**SIGNED May 5, 2011**

  
\_\_\_\_\_  
PAUL D. KEEPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE/MEDIATOR  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**Item 4**

**Board discussions and possible actions**

- a. Update, discussion, and possible action related to developments concerning the District’s legislative agenda and other relevant legislative initiatives that potentially affect the District.**

## UPDATE ON LEGISLATION THAT AFFECTS BSEACD

### BSEACD-Initiated Bills

Bill Number(s) (Author)	Subject	Progress	Comment
SB292 (Watson) HB1281(Workman)	2 director precincts linked to fixed urban core, not Austin city limits	SB passed by Senate, considered but denied in House L&C; HB out of HNRC and considered in House L&C but denied.	<b>Bill on stand-alone basis is in trouble.</b> SB is denied in House Local for unknown, but suspected reasons. HB is in trouble because Rep Workman's bills are being held in Local. Rep Eddie Rodriguez will try to attach the SB as an amendment to some other relevant HB on House floor.
SB 433 (Hegar) HB 1060 (Kleinschmidt)	Bastrop Co. de-annexation	SB passed by Senate, and by HNRC, now in House L&C ; HB passed by House, now in SNRC	No opposition known. Rep Kleinschmidt has agreed to try moving the SB in House L&C. <b>Bill should be OK.</b>
SB 467 (Wentworth) SB 1148 (Wentworth)	UIC changes to allow certain types of injection into or through Edwards (fresh and saline)	Both bills were replaced by CSSB 467, which is now out of SNRC and in Senate Local.	Senator is pleased with support and wants this bill to happen. Question now is what happens when it gets to House, although no opposition is known. <b>Cautiously optimistic about chances, but needs to be set soon.</b>
SB 853 (Watson)	Direct-discharge restrictions	In SNRC, not yet scheduled for hearing.	<b>Bill is dead;</b> Sen Watson does not want to move it just to have a hearing. Need to get more people on board earlier next session.

**Other Bills That Directly Affect BSEACD Potentially More Than Some Other GCDs**

Bill Number(s) (Author)	Subject	Latest Status	Relation to/Issue for BSEACD	Remedial Actions by BSEACD and Others
HB 1755 (Callegari)	Removes "geographic area" as basis for different DFCs and rules of a GCD	CSHB had HNRC hearing with lots of GCD opposition, left pending. New CSHB in prep after stakeholder meeting held by author.	CSHB would allow our MZs. Touchy subject for many single-county GCDs and GCDs with large hydrologically connected aquifers	<b>Bill probably close to death.</b> Leg Council still hasn't produced new amendment, probably because no consensus.
SB 692 (Estes) HB 2311 (D Miller)	Emphasizes use in definition of exempt. Prohibits any permits for D&L exempt use wells	SB passed by Senate and House, on way to Governor.	Our current Drilling Authorization before exempt well install would be disallowed; no basis for ensuring WCS and setbacks by a "permit", so we will likely need to change it to a non-evidentiary approval.	We were successful in getting a script on legislative intent on record (thanks, <b>Rep Tracy King</b> ) that preserves non-evidentiary drilling approvals. We will still need to change our Rules to conform.
SB 691 (Estes) HB 2420 (T King)	Clarifies exemption is based on use. Prohibits any permit for D&L by well capable of no more than 25K	SB (similar) passed by Senate and House, signed by Governor, effective 9/1/11.	Same as above, plus no provision for 10K exemption basis. We will depend on primacy of enabling leg to avoid reduction in regulated wells.	We were successful in getting a script on legislative intent on record (thanks, <b>Rep Eddie Lucio</b> ) that preserves non-evidentiary drilling approvals. We will still need to change our Rules to conform.

Bill Number(s) (Author)	Subject	Latest Status	Relation to/Issue for BSEACD	Remedial Actions by BSEACD and Others
SB 693 (Estes) HB 1825 (Price)	GCD permit hearings by SOAH, at request and expense of applicant	Sent to Governor	Requires establishing procedures for conducting SOAH hearings for permit contested cases.	N/A
HB 3602 (Garza)	Storm-water in (BSEACD) RZ must be treated to 85% TSS removal	CSHB 3602 offered to fix caption and scope; Hearing in HNRC on 5/3, left pending	Stormwater BMPs in Edwards recharge zone must achieve 85%, will change to 80%; introduced version would prevent Recharge Enhancement BMPs like Antioch	CS has language we crafted tha excludes Antioch RE BMP. <b>Probably not going anywhere.</b>
HB 3822 (Workman)	Excludes ALL of SW Travis Co. from Hill Country PGMA	HNRC hearing on 4/12; still pending	Removes need for TCEQ to order BSEACD or other GCD to consider annexing area in PGMA.	None required by us. Lots of mis-information re us. <b>Bill is probably dead.</b>

**Other Bills That Have Potential for Significant Consequences for GCDs**

Bill Number(s) (Author)	Abbreviated Subject	Latest Status	Issue for GCDs	Remedial Actions & Status
SB 332 (Fraser) SB 667 (Duncan) HB 1730 (Ritter) HB 1731 (Ritter)	Property rights and groundwater management requirements	CSSB 332 passed by Senate, New CSSB heard in HNRC and reported out, now in Calendars; excludes EAA and subsidence districts.	Increased chance of litigation and takings claims for dissatisfied applicants; costs to GCDs	<i>Current</i> version of new CSSB is no longer problematic for most GCDs. Need to watch floor amendments. Doesn't change anything. <b>Will probably be signed into law.</b>
SB 181 (Shapiro) HB 1319 (somewhat similar) (Laubenberg)	Standardized calculation of water use and conservation results	SB passed by Senate, and by HNRC, now in Calendars; HB out of HNRC, considered in Calendars	Good goal, but will require our permittees and us to report use by a new, common methodology	None required. SB will have to carry day. <b>Prognosis unclear.</b>
SB 727 (Seliger) HB 1482 (Beck)	Management Plan terms, requirements, and appeal procedures	Signed by Governor, effective immediately	Some additional bureaucracy and stipulated coordination.	N/A
SB 737 (Hegar) HB 1824 (Price)	M(odeled) Available GW is exempt + non- exempt, and is a permitting requirement for each DFC	Signed by Governor, effective on 9/1/2011	Good bill with unfortunate terminology change, but allows permitting limits per DFCs/MAGs	N/A

Bill Number(s) (Author)	Abbreviated Subject	Latest Status	Issue for GCDs	Remedial Actions & Status
SB 660 (Hinojosa) HB 3530 (Ritter)	TWDB Sunset Review bill, with DFC provisions removed then added back	SB without planned amendments passed by Senate, now in HNRC; CSHB passed by HNRC, not yet calendared.	CSHB has specs for DFC notices, adoption, use, petitions and amendments; some problematic language now inserted.	Other bills will have CS with DFC provisions that differ from SB 660/HB3530. Conference Committee workout?
SB 1306 (Hegar/Duncan)	Establishes procedures for DFCs and appeals of same.	SB heard by SNRC, left pending. New CSSB circulated.	Latest CS planned has problematic language even after GCD stakeholder input; very bureaucratic procedurally	CSSB 1306 still work in progress. <b>Prognosis unclear.</b>
HB 2166 (Price)	DFC notices, adoption, use, petitions, and amendments	Passed by HNRC, with only minor rather than major DFC amendment; in Calendars.	As is, nothing of real concern, but conflicts with other bills after they are amended (reportedly.)	Conflicts with other DFC bills. <b>Prognosis unclear.</b>



SB 332  
Latest Version  
Available  
5/5/11

By: \_\_\_\_\_ .B. No. \_\_\_\_\_

Substitute the following for .B. No. \_\_\_\_\_:

By: \_\_\_\_\_ C.S. .B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the ownership of groundwater below the surface of land,  
3 the right to produce that groundwater, and the management of  
4 groundwater in this state.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 36.002, Water Code, is amended to read as  
7 follows:

8 Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The  
9 legislature recognizes that a landowner owns the groundwater below  
10 the surface of the landowner's land as real property.

11 (b) The groundwater ownership and rights described by this  
12 section:

13 (1) entitle the landowner, including a landowner's  
14 lessees, heirs, or assigns, to drill for and produce the  
15 groundwater below the surface of real property, subject to  
16 Subsection (d), without causing waste or malicious drainage of  
17 other property or negligently causing subsidence, but does not  
18 entitle a landowner, including a landowner's lessees, heirs, or  
19 assigns, to the right to capture a specific amount of groundwater  
20 below the surface of his land; and

21 (2) do not affect the existence of common law defenses  
22 or other defenses to liability under the rule of capture.

23 (c) Nothing ~~The ownership and rights of the owners of the~~  
24 ~~land and their lessees and assigns in groundwater are hereby~~

1 ~~recognized, and nothing]~~ in this code shall be construed as  
2 granting the authority to deprive [~~depriving~~] or divest a  
3 landowner, including a landowner's lessees, heirs, or assigns,  
4 [~~divesting the owners or their lessees and assigns~~] of the  
5 groundwater ownership and rights described by this section [~~or~~  
6 ~~rights, except as those rights may be limited or altered by rules~~  
7 ~~promulgated by a district~~].

8 (d) This section does not:

9 (1) prohibit a district from limiting or prohibiting  
10 the drilling of a well by a landowner for failure or inability to  
11 comply with minimum well spacing or tract size requirements adopted  
12 by the district;

13 (2) affect the ability of a district to regulate  
14 groundwater production as authorized under Section 36.113, 36.116,  
15 or 36.122 or otherwise under this chapter or a special law governing  
16 a district; or

17 (3) require that a rule adopted by a district allocate  
18 to each landowner a proportionate share of available groundwater  
19 for production from the aquifer based on the number of acres owned  
20 by the landowner [~~A rule promulgated by a district may not~~  
21 ~~discriminate between owners of land that is irrigated for~~  
22 ~~production and owners of land or their lessees and assigns whose~~  
23 ~~land that was irrigated for production is enrolled or participating~~  
24 ~~in a federal conservation program~~].

25 (e) This section does not affect the ability to regulate  
26 groundwater in any manner authorized under:

27 (1) Chapter 626, Acts of the 73rd Legislature, Regular

1 Session, 1993, for the Edwards Aquifer Authority;

2 (2) Chapter 8801, Special District Local Laws Code,  
3 for the Harris-Galveston Coastal Subsidence District; and

4 (3) Chapter 8834, Special District Local Laws Code,  
5 for the Fort Bend Subsidence District.

6 SECTION 2. Section 36.101, Water Code, is amended by  
7 amending Subsection (a) and adding Subsection (a-1) to read as  
8 follows:

9 (a) A district may make and enforce rules, including rules  
10 limiting groundwater production based on tract size or the spacing  
11 of wells, to provide for conserving, preserving, protecting, and  
12 recharging of the groundwater or of a groundwater reservoir or its  
13 subdivisions in order to control subsidence, prevent degradation of  
14 water quality, or prevent waste of groundwater and to carry out the  
15 powers and duties provided by this chapter. In adopting a rule under  
16 this chapter, a district [~~During the rulemaking process the board~~]  
17 shall:

18 (1) consider all groundwater uses and needs;

19 (2) [~~and shall~~] develop rules that [~~which~~] are fair  
20 and impartial;

21 (3) consider the groundwater ownership and rights  
22 described by Section 36.002;

23 (4) consider the public interest in conservation,  
24 preservation, protection, recharging, and prevention of waste of  
25 groundwater, and of groundwater reservoirs or their subdivisions,  
26 and in controlling subsidence caused by withdrawal of water from  
27 those groundwater reservoirs or their subdivisions, consistent

1 with the objectives of Section 59, Article XVI, Texas Constitution;  
2 (5) consider the goals developed as part of the  
3 district's comprehensive management plan under Section 36.1071;

4 and

5 (6) [~~and that do~~] not discriminate between land that  
6 is irrigated for production and land that was irrigated for  
7 production and enrolled or participating in a federal conservation  
8 program.

9 (a-1) Any rule of a district that discriminates between land  
10 that is irrigated for production and land that was irrigated for  
11 production and enrolled or participating in a federal conservation  
12 program is void.

13 SECTION 3. This Act takes effect September 1, 2011.

**Item 4**

**Board discussions and possible actions**

**b. Discussion and possible action on mediation concerning the Jeremiah Venture contested-case mediation.**

**Item 4**

**Board discussions and possible actions**

**c. Discussion and possible action follow-up activities associated with the Board's granting of Centex's request for reconsideration of recent District rule-making.**

**Item 4**

**Board discussions and possible actions**

**d. Discussion and possible action related *City of Kyle v. Goodman et al. and the Barton Springs Edwards Aquifer Conservation District*, Cause No. 10-1267, 22<sup>nd</sup> District Court, Hays County, Texas.**

**Item 5**  
**Adjournment**