

**Barton Springs/Edwards Aquifer Conservation District
Board of Directors Meeting Minutes
Special Called Meeting & Public Hearing
City of Buda City Council Chambers
July 29, 2019**

Board members present at commencement: Blayne Stansberry, Mary Stone, Bob Larsen, Craig Smith, and Blake Dorsett. Director's Attorney Brian Sledge. Staff present included: Alicia Reinmund-Martinez, Brian Hunt, Robin Gary, Vanessa Escobar, Kendall Bell-Enders, Justin Camp, Erin Swanson, Lane Cockrell, Jackie Vay and Tammy Raymond. Staff Attorney Bill Dugat. These minutes represent a summarized version of the meeting; the complete discussion of the following items is recorded digitally.

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.

President Stansberry called the meeting to order at 4:03 p.m., noting that a quorum of the Board was present. She introduced the Board members and their Attorney Brian Sledge.

Brian Sledge gave an overview of the contested and uncontested issues of the permit. He stated that all notices for the hearing were published according to Chapter 36 of the water code, and that a court reporter was present for this final hearing.

President Stansberry then stated that the Board would here public comments.

2. Citizen Communications (Public Comments).

The Board will accept public comment at the beginning of the Board meeting. Public comment is limited to no more than three minutes and no more than two other speakers who are present and signed up to speak will be allowed to pass the speaker's time to another speaker. Speakers are not permitted to simply repeat comments made by another speaker, except to state the speaker concurs with the remarks of the earlier speaker.

The following citizens gave public comment:

Jack Hopper
Patrick Cox
Sharon Amos
Marshall Jennings
Marcella Jones

Steve Amos
James Fort
Nikki Williams
David Welp
Joe Williams
Larry Musselwhite
Bob Elkins
Doug Wierman
David McCully
Louie Bond
Scott Mitchell
Chris Elliott
Steve Carrie
Elizabeth Schaeffer
Malcolm Harris
Romey Swanson

3. Public Hearing.

The Barton Springs Edwards Aquifer Conservation District (BSEACD) Board of Directors will consider the application of Needmore Water LLC (Applicant) for conversion of a Temporary Production Permit to a Regular Historical Production Permit to authorize the withdrawal of an annual permitted volume of approximately 289,000,000 gallons per year of groundwater from the Trinity Aquifer. The Applicant will operate the well for agricultural uses. The well is located on Fulton Ranch Road, Wimberley, Texas 78676 (Lat 29.970265, Long -98.034161).

Bill Dugat, General Counsel for the District staff gave a procedural history of the permit from January 2017 through April 2019.

Vanessa Puig-Williams, Executive Director of TESPAs, gave arguments against the approval of the permit.

Eddie McCarthy, attorney representing Needmore, gave arguments in favor of the approval of the permit.

Board members asked questions of each party.

Rebuttals were given by TESPAs, Needmore, and staff's General Counsel.

Vanessa Escobar, Kendall Bell-Enders, and Brian Hunt were sworn in for the record.

Vanessa Escobar gave a presentation on the application.

Brian Hunt gave a presentation on the Science that was conducted during the application process.

Kendall Bell-Enders gave a presentation on the Special Provisions that staff deemed necessary if the application was approved by the Board.

See attached presentation.

Board member asked questions of the staff.

President Stansberry stated the Board would meet in Executive Session as authorized by the Texas Government Code 551.071 (Consultation with Attorney) at 7:38 p.m. President Stansberry stated that no final actions or decisions would be made while in Executive Session.

The Board reconvened into open session at 8:28 p.m. President Stansberry stated that no final actions or decisions were made while in Executive Session.

4. Discussion and Possible Action.

Discussion, and possible action on the application of Needmore Water LLC (Applicant) for conversion of a Temporary Production Permit to a Regular Historical Production Permit to authorize the withdrawal of an annual permitted volume of approximately 289,000,000 gallons per year of groundwater from the Trinity Aquifer. The Applicant will operate the well for agricultural uses. The well is located on Fulton Ranch Road, Wimberley, Texas 78676 (Lat 29.970265, Long -98.034161).

Bill Dugat stated that because the General Manager found that there will be unreasonable impacts, she recommends that the Board approve the conversion to a regular permit, with special conditions tied to actual aquifer data in order to avoid unreasonable impacts.

Special conditions are as follows:

- Collect real-time data from the Amos well to monitor water level depths over time;
- Implement pumping reductions

The Board asked additional questions of the staff.

The fact that the District would incur costs for monitoring equipment was brought up.

Ed McCarthy on behalf of Needmore LLC, noted that Mr. LaMantia stated that if the Board granted his permit, that he would give the District \$2500 per year to help with monitoring costs.

President Stansberry stated the Board would meet in Executive Session as authorized by the Texas Government Code 551.071 (Consultation with Attorney) at 8:56 p.m. President Stansberry stated that no final actions or decisions would be made while in Executive Session.

The Board reconvened into open session at 9:14 p.m. President Stansberry stated that no final actions or decisions were made while in Executive Session.

Director Smith made the following motion:

Whereas, H.B. 3405 greatly limited the District's discretion in issuing permits for existing wells in the newly annexed area of the District,

I believe that the Administrative Law Judge was correct in holding that Needmore was entitled to a temporary permit without a hearing because it had a well that was in operation prior to the effective date of the Act,

The Board therefore bound to convert the temporary permit to a regular permit unless we find that doing so would cause unreasonable impacts to other wells or a failure to achieve the Desired Future Condition,

The District's staff has recommended special conditions to the permit and said that they believe the special conditions will avoid unreasonable impacts and provide time to respond if such impacts occur, and

The Applicant has accepted the recommended special conditions and also offered to contribute \$2500 per year to defray the cost of the associated monitoring:

Therefore, since the Applicant has agreed to modify the special conditions to include the \$2500 per year contribution, I move that the District issue the regular permit in the amount of 289,000,000 gallons a year for agricultural purposes, subject to the other special conditions set out in the Rule 11 agreement.

President Stansberry asked Mr. LaMantia if he agreed to the \$2500 per year contribution.

Mr. LaMantia answered yes.

Director Larsen seconded the motion.

Director Stone stated that as a Director of this area this has been one of the most difficult permits that this District has ever had. We all recognize in Texas that people have the right to do what they want with their land and farming is part of who we are. At the same time we are charged with the responsibility to ensure that everyone's water is available, protected and of high quality. She said that she appreciates that they were willing to work with us and the contribution, and hope that moving forward that we will continue to work together. If these Special Conditions do come up, that they are addressed swiftly and a restoration is made. She commended staff for a great job and that through their research and hard work has shown us that they get it, and it is our responsibility to protect this resource. With the Special Conditions in place she believes that will happen.

President Stansberry stated the statute is so limited with the Board having no discretion of the amount requested. She commended staff on the effort that was put into this permit process, and coming up with the Special Conditions to protect the aquifer.

Director Larsen thanked all parties that have been involved in this difficult case. We were hangstrung by state law in many ways. He said that he thinks that a much better permit has come out of this because of all parties that were involved.

President Stansberry stated that there is a motion and a second and called for a vote.

The motion passed unanimously with a vote of 5 to 0.

5. Adjournment.

Without objection, President Stansberry adjourned the meeting at 9:21 p.m.

Approved by the Board on August 22, 2019

By: Blayne Stansberry Attest: Blake Dorsett
Blayne Stansberry, President Blake Dorsett, Board Secretary



Public Hearing - July 29, 2019

Needmore Water LLC.

BSEACD:
Bill Dugat, District General Counsel
Vanessa Escobar, Regulatory Compliance Coordinator
Brian Hunt P.G. , Hydrogeologist
Kendall Bell-Enders, Regulatory Compliance Coordinator



Procedural History

January 12, 2017	Board meeting matter referred to SOAH
March 6, 2017	SOAH telephonic hearing: briefing schedule
May 19, 2017	SOAH denies Needmore's Jurisdictional Plea
July 31, 2017	Hearing on Party Status
Feb-Mar 2018	Cross motions for summary disposition and hearing before ALJ
July 23, 2018	Proposal for Decision granting Needmore's Motion for Summary Disposition (no remaining issues to resolve)
August 7, 2018	GM's Motion to Recommend Permit Issuance Needmore's Request for Clarification TESPA's Exceptions to PFD
September 10, 2018	ALJ's letter – SOAH lacks jurisdiction and District may issue permit
October 30, 2018	Board remand order
April 1, 2019	Order No. 11 Dismissing Case



Overview

- ❖ **Permitting per H.B. 3405**
- ❖ **Summary of Needmore LLC's Temporary Permit**
- ❖ **Considerations for converting to a Regular Permit**
- ❖ **Aquifer testing and evaluation of impacts**
- ❖ **Permit Special Provisions**
- ❖ **Rule 11 Agreement**



H.B. 3405 - Purpose and Intent

- ▶ **2015 Annexation** - Extended groundwater protection to previously unmanaged aquifers in Hays County; Nonexempt uses must now be permitted.
- ▶ **Temporary Permits** - Provided an interim authorization to operate a well until conversion to a Regular Historical Production Permit. Expedited review and Board approval.
- ▶ **Conversion to Regular Permit** – Shall convert to a regular permit for the amount requested. May only reduce the volume for :
 - **A failure to achieve the DFC; or**
 - **Unreasonable impacts on existing wells.**



H.B. 3405: Temporary Permits Unique Statutory Requirements

▶ Eligibility

- ❖ operated the well before 6/19/15 or well owner must have an executed contract (before 6/19/15) to drill/operate

▶ Beneficial Use

- ❖ Put towards a beneficial use – Water Code
- ❖ Permitted for existing use type sought in application

▶ Permitted Volume

- ❖ Maximum Production Capacity – based on 36hr pump test
- ❖ Volume does not have to be based on reasonable, non-speculative demand



Temporary Permit Summary: Needmore Water LLC issued 10/18/2015

Permitted Volume = 179,965,440 gpy


- ❖ Maximum Production Capacity defined by GM interpretation

Use Type – Agricultural Livestock

- ❖ Existing uses: Wildlife Management and Recreation


Special Provision

- ❖ Prohibited operation of the damaged well until repairs were made



Considerations for Conversion to a Regular Permit

Temporary Permit	Regular Permit
<ul style="list-style-type: none"> ✓ Timely filed application ✓ Ownership & Declarations ✓ Eligibility & Beneficial Use ✓ Volume = Max Capacity ✓ Receiving Area & Well Location ✓ Well Condition 	<ul style="list-style-type: none"> ✓ Current Temporary Permit ✓ DFC & Unreasonable Impacts <ul style="list-style-type: none"> ▪ Aquifer test to evaluate impacts



Considerations for Conversion to Regular Permit

- ✓ **Eligibility** – demonstrated well was in existing operation before effective date of HB 3405
- ✓ **Timely filed application**
- ✓ **Verified Ownership** – Needmore Water LLC holds all the rights to groundwater production
- ✓ **Declarations** – The applicant will comply with District Rules

✓ Volume = Maximum Production Capacity

- ❖ **Temporary Permit Volume** - original calculation based on actual pump test rate of 428 gpm at 80% of the year = 179,965,440 MGY

GM changed its determination to 289,000,000 based on a current pump test and lack of industry references.

- ❖ **Regular Permit** – current calculation based on maximum pump size of 550 gpm/operating 24 hrs a day/365 days a yr = 289,080,000 MGY
- ❖ **Unique volume (Max Capacity)** is a result of H.B. 3405

✓ Well Location & Receiving Area

Current Use*: to supplement a ponded water feature for Agricultural Use (wildlife management) and recreational activities.

Future Use: agricultural irrigation on pasture areas

* Well condition has been fully repaired as of December 2015



✓ **Beneficial Use**

Beneficial use type – existing use types documented as ‘Agricultural Use (Wildlife Management) and ‘Recreational Use’



The definition of “**Agricultural Use**” under District Rule 2.1 includes “**wildlife management**”. The District has a copy of an approved TPWD wildlife management plan.



Under 2015 District Rules “Agricultural Well” – means a well for agricultural livestock or agricultural irrigation uses.

Water Code Section 36.001 definitions broader than 2015 District Rules:

- “Agricultural Use” – any use or activity involving *agriculture*, including irrigation.
- “Agriculture” – any of the following activities:
 - Crop production
 - Plant cultivation
 - Livestock production
 - Cover crops
 - Wildlife management
 - Raising horses

2016 Rule amendments conform BSEACD definitions to Water Code Chapter 36 Water Code definition treats all agriculture uses the same and HB 3405 requires permit for amount set forth in application not to exceed maximum production capacity for “activities associated” (e.g. Ag) with a well.

AG Op KP-247 (2019) – GCD not authorized to define agricultural terms more narrowly than section 36.001 Water Code allows



✓ **Aquifer Test**

- **Evaluation of Potential Impacts**

BSEACD Mission

Preserve and protect the groundwater resources for everyone by managing groundwater production on a long-term basis while avoiding the occurrence of unreasonable impacts.



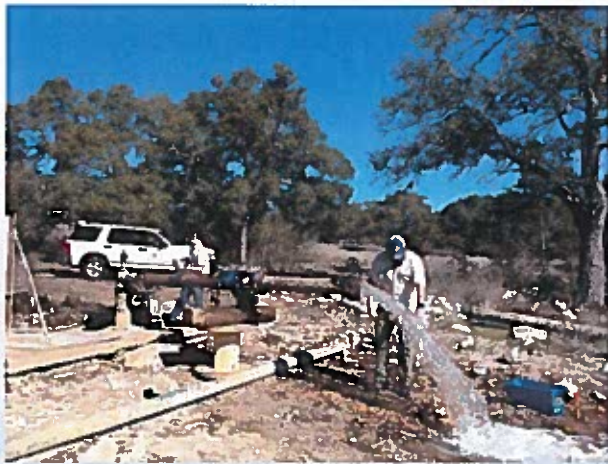
Evaluation of Unreasonable Impacts

Aquifer Testing is the primary tool for the evaluation:

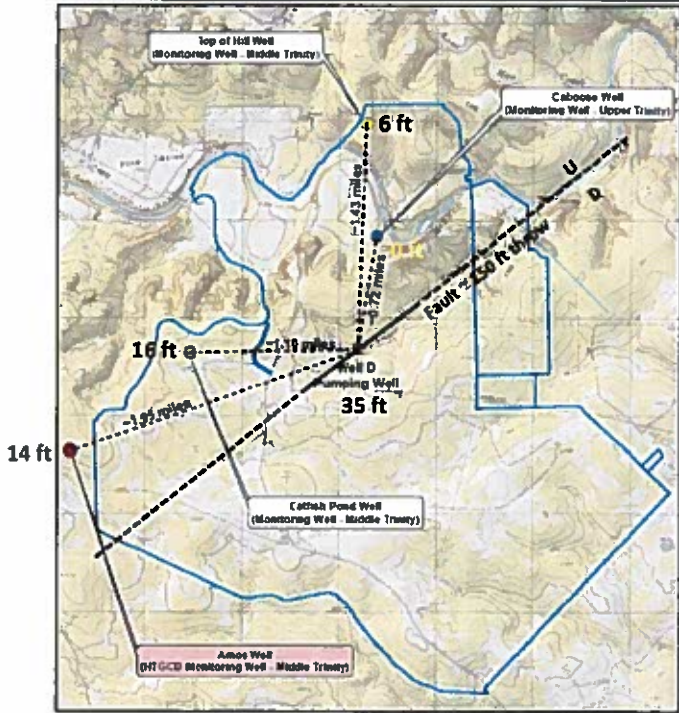
- Measures short-term effects on water level and quality.
- Aquifer parameters from the test allow the forecast of drawdown and potential well interference.



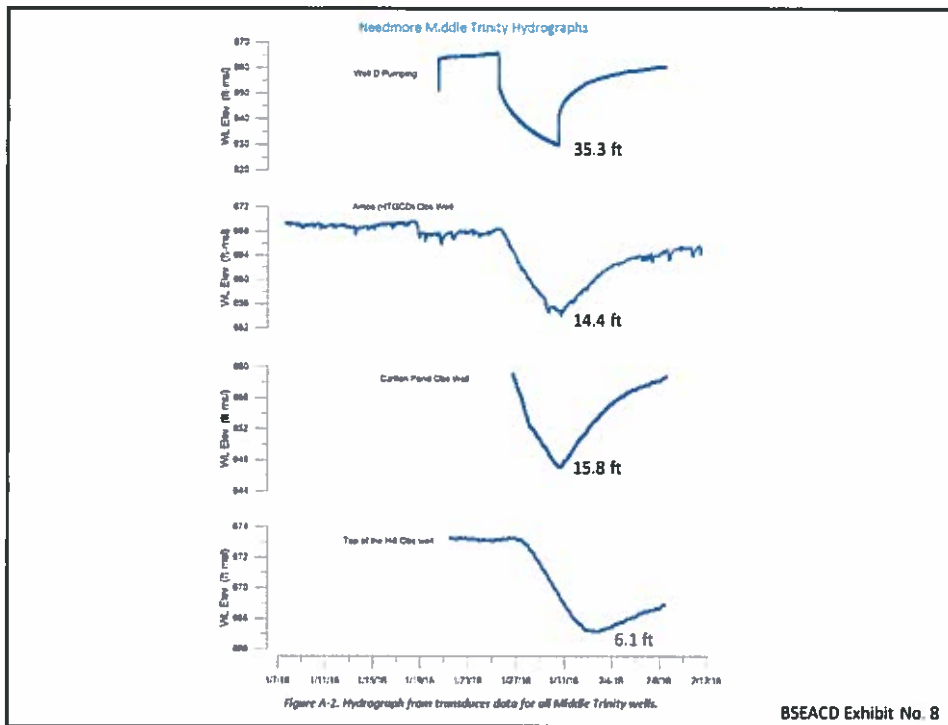
Aquifer Test



- January 2016
- 5 days pumping
- 544 gpm




BSEACD Exhibit No. 8




Report of Findings
Water Resources Evaluation of the
Needmore River Ranch, Hays County, Texas

For:
Needmore Ranch II, Ltd.
3900 N. McCall
McAllen, Texas 78501




- The aquifer test was done according to BSEACD guidelines and the District was consulted and involved in all aspects of the test.
- Data collected from the test allows good aquifer parameter estimation for modeling (forecasting).

Report of Findings: WRGS 12-011



Wet Rock Groundwater Services, L.L.C.
Groundwater Specialists
TRPG Firm No 30030
311 Ranch Road 630 South, Suite 103
Austin, TX 78734 Ph: 512.713.3226
www.wetrock.com



**Barton Springs
Edwards Aquifer**
CONSERVATION DISTRICT

Technical Memo 2016-2211
November 2016

Evaluation for Unreasonable Impacts: Needmore Water, LLC, Well D Permit Application

Bria D. Theis, P.G., and Brian A. Smith, Ph.D., P.G.

Introduction

The Barton Springs/Edwards Aquifer Conservation District's (District) secretary was expanded on June 13, 2015 through the passage of H.B. 3409 (the Act). The Act requires all nonexisting, non-Edwards wells to be permitted and provides a three-month period to apply for a Temporary Permit, which expired on September 13, 2015. The Temporary Permit provides well owners with an interim authorization to operate a well prior to conversion to a Regular Material Production Permit. In accordance with Section 4(c) of the Act, the District is also required to evaluate the proposed production prior to permit conversion to Regular Permits to determine if the amount authorized will cause:

1. A failure to achieve the applicable adopted desired future conditions for the aquifer, or
2. An unreasonable impact on existing wells.

The determination of whether the proposed production "will cause" one of the above conditions requires a prediction of the future effects on the aquifer using the best available science. Regarding factor 2 above, the District has developed policies and procedures to guide the application process and review, and the requisite evaluation of any proposed groundwater production in order to provide a systematic and consistent means of evaluating impacts to existing wells. The term "unreasonable impacts" is not defined in statute, therefore, the District has to rely on its interpretation which includes a suite of factors. To facilitate this evaluation, the District interprets "unreasonable impacts on existing wells" to include:

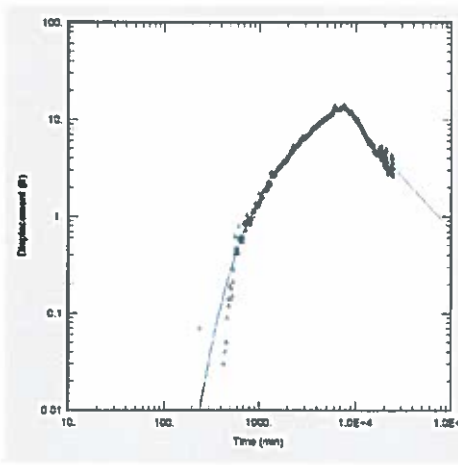
1. well interference related to one or more water wells existing to yield water at the ground surface,
2. well interference related to a significant decrease in well yields that results in one or more water wells being unable to obtain water on authorized, historic, or applicable volume or rate from a reasonably efficient water well,
3. well interference related to the lowering of water levels below an economically feasible pumping lift or reasonable pump lift at a well, and
4. the degradation of groundwater quality such that the water is unusable or requires the installation of a treatment system.

Section 4 of the Act further describes the District's authority to reduce permits if the District finds that the production "will cause" unreasonable impacts. The former's hearing mechanism requires a projected forecast based on the application of the best available scientific data and aquifer testing data provided with the application. Given the intent of Section 4 of the Act, the evaluation of future projected impacts, the District has applied a reasonable and logical approach that is consistent with District's objectives to

Technical Memo 2016-2211
November 2016

- BSEACD evaluated the aquifer test data.
- BSEACD estimated aquifer properties based on aquifer test data.
- BSEACD evaluated the potential for unreasonable impacts.

Example of Analytical Modeling



Obs. Wells
= Amos OW

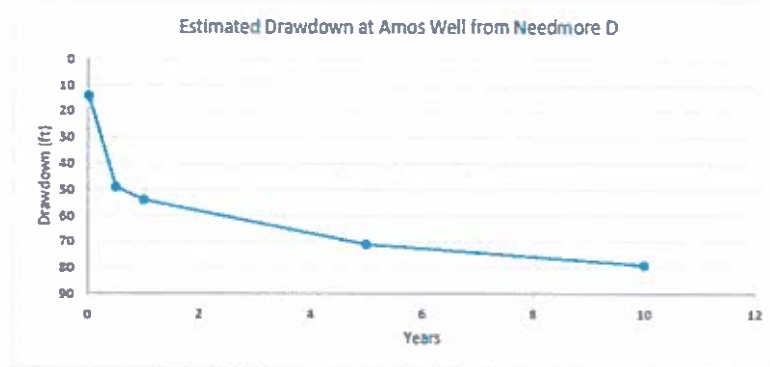
Aquifer Model
Confined

Solution
Theis

Parameters
T = 834.3 ft²/day
S = 2.7E-6
K_{eff}/b = 0.1
b = 230 ft

Modeling software using the Theis equation to estimate aquifer parameters from the aquifer test.

Aquifer parameters then help to forecast drawdown.



Modeled (forecasted) drawdown at the Amos well from Well D pumping over time.

BSEACD Exhibit No. 9



Barton Springs
Edwards Aquifer
Conservation District

Unreasonable Impact Findings

- ▶ At maximum pumping capacity, and during severe drought conditions, drawdown from Well D is modeled to cause well interference on surrounding supply wells.
- ▶ Thus, the data and modeling indicates there will be an unreasonable impact.



Uncertainty...

- ▶ While the evaluations use methods that are the best available practices, we recognize there is inherent uncertainty with any modeling or forecasting.

- ▶ **Measured data** is the best way to address the uncertainty of forecasted drawdown.



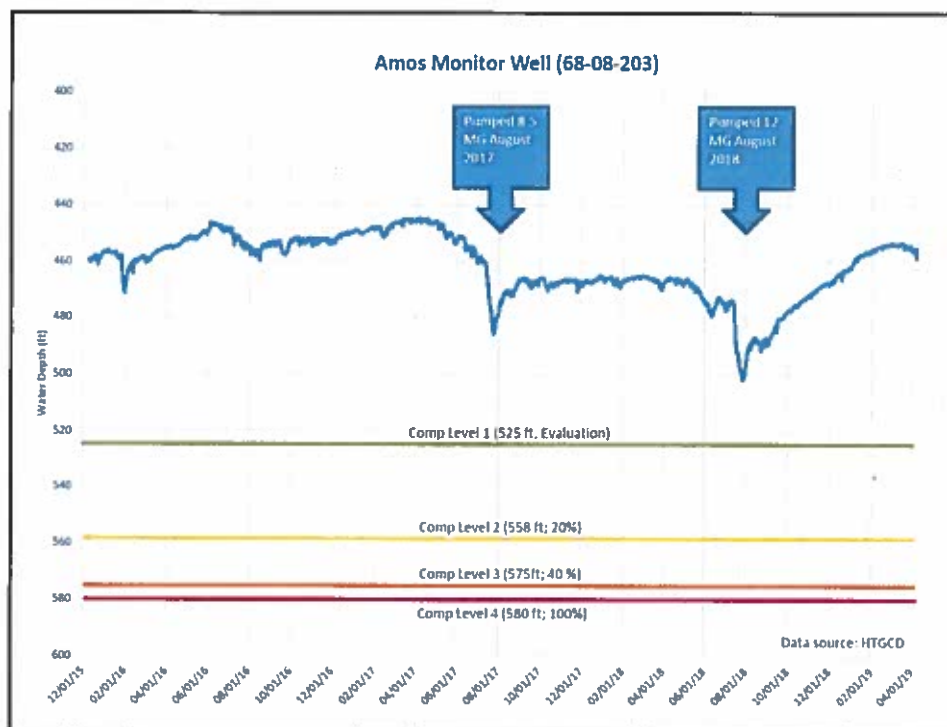
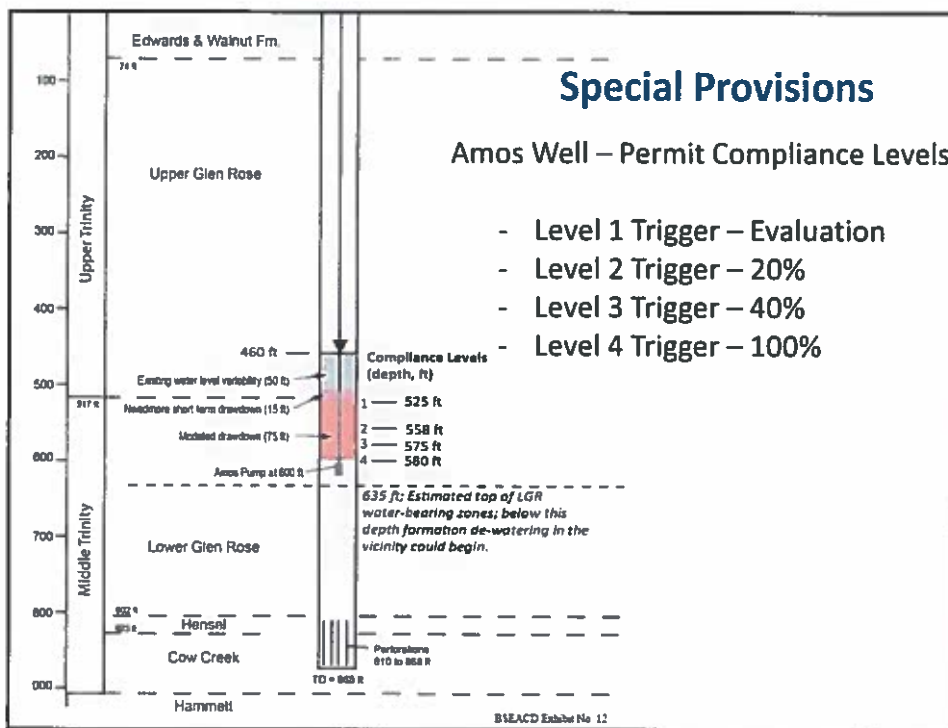
Aquifer Science Recommendation

HB 3405 - District shall issue an order granting the Regular Permit unless the production will cause an unreasonable impact or failure to achieve the DFC

Aquifer Science recommends to the GM to approve the permit with special conditions tied to actual aquifer data in order to avoid unreasonable impacts.

- 1. Collect real-time data from the Amos well to monitor water level depths over time;**

- 2. Implement pumping reductions (up to 100% curtailment) indexed to levels in the Amos well.**



**Amos Well
Active Telemetry Site**



H.B. 3405 – Factors for Consideration

- ▶ Limited factors for reducing a temporary permit upon the conversion to Regular Permit:
 - A failure to achieve the DFC; or
 - Unreasonable impacts on existing wells.
- ▶ Total authorized production from the Middle Trinity Aquifer in the District including the requested permitted production would not exceed the MAG estimate as determined by the TWDB

	gallons/year	acre-ft/year
Trinity MAG (Shared and Exclusive)	1,068,139,578	3,278
Current Trinity Permitted Production	324,716,117	997
Needmore Production	289,080,000	887
Needmore + Current Trinity	613,796,117	1,884
% of Total MAG	57%	57%



Special Provisions

Special provisions are necessary to avoid causing unreasonable impacts to existing wells

- Permit-specific Response Actions
- Temporary reductions at times when there is demonstrable evidence
 - ❖ Measured water levels in index wells



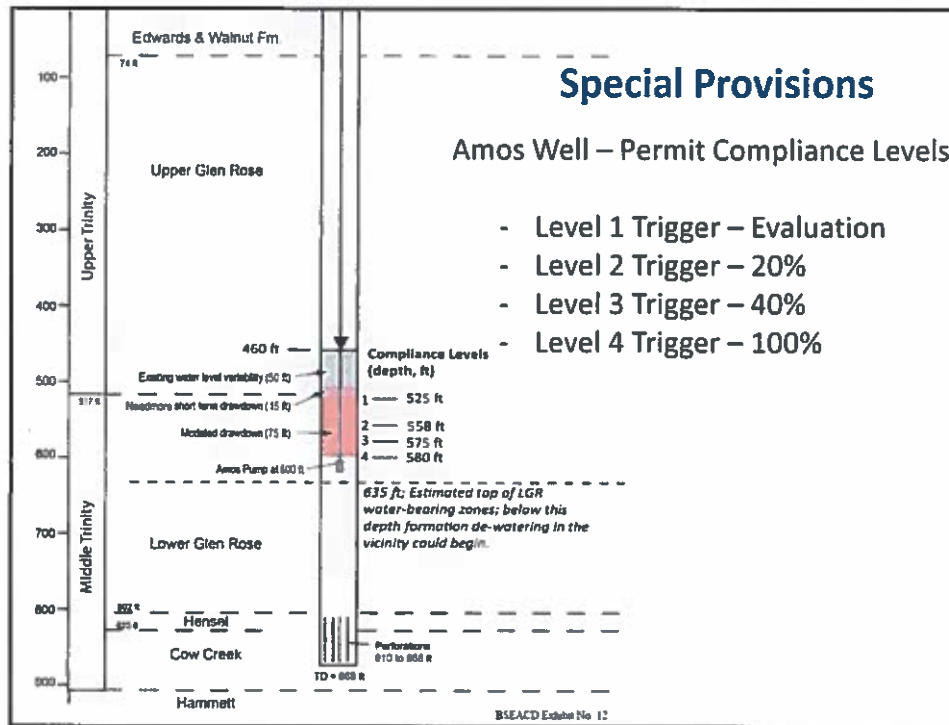
Special Provisions – Index Wells

Primary Index Well – Amos Well

- Operational Domestic
- Access Agreement
- District is responsible for purchasing, installing, maintaining, repairing all monitoring equipment (pressure transducer/telemetry)
 - ❖ Installed within 90 days of permit issuance
- Water level data on website

Secondary Index Well – Needmore “Catfish” well

- Operational livestock
- Established to correlate data with primary
- Access agreement
- Permittee is responsible for monitoring equipment (pressure transducer)
 - ❖ Install within 90 days of permit issuance
 - ❖ Continuous data provided to District quarterly
- In lieu of installing telemetry, manual water level measurements shall be provided each month with meter reading



Barton Springs
Edwards Aquifer
CONSERVATION AUTHORITY

Special Provisions

“Baseline Curtailment Rate (BCR)” - is a calculated annual volume based on the actual metered and reported monthly pumping volumes of the previous 12 months.

- BCR is an adjusted annual volume
- Compliance Level 2 Trigger (558 ft bls) = 20%
- All temporary curtailments are applied to the BCR volume on a monthly basis
- District will notify the Permittee via certified mail within ten business days
 - ❖ Notification will include a revised pumping chart.
- Every time Level 2 Trigger is reached the revised chart will replace the chart in place at the time



Special Provisions

- If unreasonable impacts cannot be avoided through temporary reductions (unforeseen circumstance)
 - ❖ Amendment and hearing
 - ❖ Temporary cessation
 - ❖ Permit reduction
 - ❖ Voluntary mitigation

- The Permittee may submit an amendment application to request revisions or modifications to the permit volume or the permit special provisions.



Rule 11 Agreement and Revised Special Provisions

Rule 11 TRCP = To be enforceable agreement must be in writing, signed, filed with the "court"

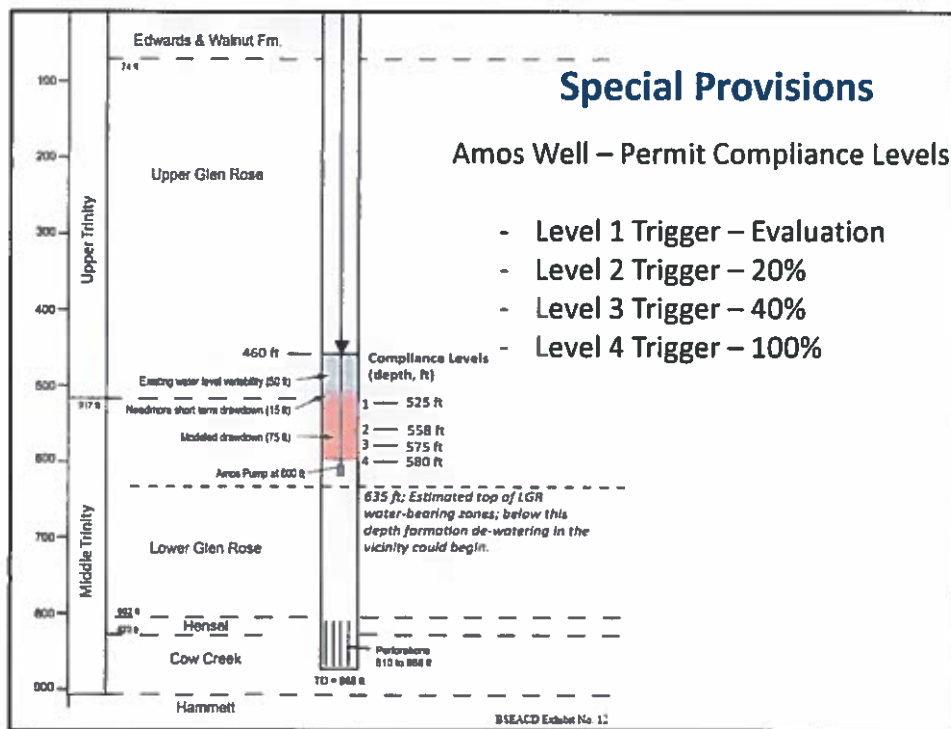
October 31, 2017 "Rule 11 Agreement" Needmore and GM agreed and filed with the ALJ:

- Change special provision, Section 2, Number 8
- Lower Compliance Level 2 trigger
- Needmore withdraws contest of Regular Permit
- If Board issues permit as recommended by GM, Needmore will not appeal.
- Needmore and GM request Regular Permit Issuance with the Rule 11 modifications.



Rule 11 Agreement and Revised Special Provisions

8. If the District determines that new pumping centers or large-scale groundwater production within the area of influence are significantly affecting drawdown relative to the permit Compliance Levels, then the District ~~may~~ **shall** consider revision of these permit provisions and permit Compliance Levels. For drawdown significantly affected by production located outside of the jurisdiction of the District, the District's General Manager, with Needmore Water LLC's input, will determine the amount of drawdown not related to Well D and, as appropriate, the General Manager will recommend to the Board adjustment to the present conditions relative to the amount of draw down. Any permit revisions must be approved by the Board through a permit amendment.





General Manager's Preliminary Decision

Because the GM found that there will be unreasonable impacts, the GM recommends that the Board approve the conversion to a regular permit, with special conditions tied to actual aquifer data in order to avoid unreasonable impacts.

- Collect real-time data from the Amos well to monitor water level depths over time;
- Implement pumping reductions (up to 100% curtailment) indexed to levels in the Amos well.



Questions