

**Barton Springs/Edwards Aquifer Conservation District
Board of Directors Meeting Minutes
Regular Meeting & Public Hearing
April 9, 2015**

Board members present at commencement: Mary Stone, Craig Smith, Blayne Stansberry, Bob Larsen and Blake Dorsett. Staff present: John Dupnik, Brian Smith, Kendall Bell-Enders and Tammy Raymond. Bill Dugat of Bickerstaff, Heath, Delgado, Acosta also participated in the meeting. Also present were those on the attached sign-in sheet. These minutes represent a summarized version of the meeting; the complete discussion of the following items is recorded digitally.

1. Call to Order.

Ms. Stone called the meeting to order at 6:00 p.m., noting that a quorum of the Board was present.

2. Citizen Communications (Public Comments).

There were no public comments of a general nature.

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.**

2. **Approval of minutes of the Board's March 26, 2015 Regular Meeting.**

Ms. Stansberry moved approval of consent agenda items 1 and 2, noting an invoice from Bickerstaff in the amount of \$7504.40.

Mr. Smith seconded the motion and it passed with a vote of 4 to 0, Dr. Larsen abstained.

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 unless the topic is specifically listed elsewhere in this agenda.)*

1. Standing Topics.

i. Personnel matters and utilization

- ii. Upcoming public events of possible interest
- iii. Aquifer conditions and status of drought indicators

2. **Special Topics.** *(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. Review of Status Update Report – at directors’ discretion
- ii. Update on activities related to GMA and regional water planning
- iii. Update on efforts to assess saline Edwards desalination/ASR feasibility
- iv. Update on area roadway projects
- v. Update on activities related to the HCP and the associated draft EIS

Mr. Dupnik and staff updated the Board and answered Directors’ questions on the items listed above.

4. Public Hearing

Continuation of a public hearing related to the applications filed by the City of Kyle for (1) a Class B Conditional Production Permit to increase the permitted pumpage from the Edwards aquifer for public water supply purposes from 165,000,000 gallons/year up to 350,000,000 gallons per year, and (2) a Transport permit to export the increased volume outside the District into the City of Kyle’s service area. The increased pumpage requested would be from the City of Kyle’s existing well No. 4, located near the intersection of RM 2770 and CR 171 in the 700 block of Kohler’s Crossing, in Kyle, Texas.

Note: The Board of Directors issued an order dated February 11, 2010 partially approving Kyle’s applications. The matter was appealed and on March 27, 2013 the 22nd District Court in Hays County issued a judgment remanding the applications in Cause No. 10-1267 SOS Alliance v. City of Kyle, Goodman et al., and the Barton Springs/Edwards Aquifer Conservation District. The Board will consider the remand by the 22nd District Court in Cause No. 10-1267.

Ms. Stone passed the gavel to Dr. Larsen, the presiding officer over the City of Kyle hearing.

Dr. Larsen opened the Public Hearing at 6:21 p.m. At that time he read into the record the above language. He then asked each party to identify themselves for the record.

Mike Gershon stated that he is the legal counsel for the City of Kyle (City) and with him is Jason Biemer, the Utility Resources Manager.

Kelly Davis of Save Our Springs Alliance (SOS) stated that Bill Bunch wanted to attend but was ill, and that the Board might want to grant a continuance until the next meeting if the addendum that he prepared was not agreed to by the other two parties.

John Dupnik stated that he is the General Manager of the BSEACD (District) and is representing the District.

Dr. Larsen stated that he had issued an Order dated March 20, 2015 setting the hearing for tonight and requested that each party file documents for the Board's consideration. On April 2, 2015, the City filed a status report, an un-signed Settlement Agreement, a proposed Order and proposed Permits, which are in the Board's backup. He then asked if there are any supplemental filings.

Kelly Davis of SOS stated that the addendum to the Settlement Agreement she brought tonight is a supplemental filing.

Dr. Larsen asked why this coming up at this late date.

Ms. Davis stated that the agreement that was sent includes a finding of fact #22 in exhibit A that was unnecessary, and withdrawn, and should not be included in the Board's final Order. She stated that it was her understanding from Bill Bunch that there was no evidence presented for this particular finding of fact at the hearing, and that the parties agreed via email to delete that finding of fact regarding Desired Future Conditions.

Mr. Gershon stated that the City concurs with the condition laid out by SOS, and that the City believes that the commitment to delete that particular finding of fact was accomplished. He stated that there is no evidence of that finding of fact #22 in the proposed Order and that the General Manager of the District, the City, and SOS agreed to not include it. He went on to say that he believes Mr. Bunch was trying to be abundantly careful, and that the City does not see that as an issue.

Mr. Dupnik stated that the District has also reviewed the addendum and concurs with the City's position of SOSs wish to remove the finding, that it appears that the addendum makes that abundantly clear, and that it is acceptable to the District to remove it.

Mr. Smith stated that if they can satisfy Ms. Davis that the particular paragraph is gone, then we could proceed.

Ms. Davis stated that the addendum also specifies that exhibit C to the agreement has not been initialed by the parties confirming that exhibit C has been reviewed, and is the agreed upon language.

Mr. Gershon stated that most of the documents were initialed and believes the documents before the Board have been agreed to by all parties.

Mr. Dugat stated to be clear; there was a Settlement Agreement that the parties all agreed to, and that there were two exhibits to the Settlement Agreement that are not in the Board's backup but were emailed previously. One was an Order that was being negotiated and the Permits. After the Settlement Agreement was drafted, an issue came up about finding of fact #22 and all the parties agreed to delete it.

It was deleted, and the Order prepared for the Board to sign does not include it. We believe that the Order and the Permits that are exhibit C of the Settlement Agreement are ready for the Board to sign. SOS is saying that we didn't put in the Settlement Agreement that we are going to delete finding of fact #22, so to me this is form over substance. He said that if all parties are ready to sign the addendum that this can be expedited.

Mr. Gershon explained that this issue came up at 4 pm this afternoon and that the Mayor was not available to sign it. He said that the council unanimously agreed to the Settlement Agreement and believes that the Mayor will sign it.

Mr. Dugat explained that the Board could delay the hearing two weeks, or if your satisfied with the Order and the permits you could delegate to the Board President to sign the Order, and the General Manager to sign the Permits, contingent upon that settlement agreement and addendum coming in signed, and stipulate a deadline, that way another Board meeting would not be necessary. He said that the third option would be to enter the Order and Permits without regard to the Settlement Agreement.

After discussion, Mr. Smith moved that the Board proceed tonight to hear the presentation of the Settlement Agreement and take action, and if the action is to approve the Settlement Agreement, authorize the Board President to execute the Order and the General Manager to execute the Permits upon receipt of the fully signed addendum within one week.

Ms. Stone seconded the motion and it passed unanimously with a vote of 5 to 0.

Dr. Larsen asked if any of the parties had any additional comments.

Hearing no additional comments from the parties, Dr. Larsen closed the Public Hearing at 6:42 p.m.

Mr. Smith moved that subject to the delivery of the fully executed addendum and Settlement Agreement within one week, to instruct the Board President to sign the Order on behalf of the Board and the General Manager to sign and issue the Conditional and Transport Permits and adopt all exhibits and documents.

Ms. Stone seconded the motion and it passed unanimously with a vote of 5 to 0.

Dr. Larsen passed the gavel back to Ms. Stone.

5. Discussion and possible action.

5a. Discussion and possible action related to an update on activities related to the Electro Purification Trinity well field located just outside of the District's boundaries.

Dr. Smith gave a presentation that he had previously given to the Hays County Commissioner Court, titled "The Status of the Central Hays County Groundwater Evaluation."

No action was taken.

5b. Discussion and possible action related to pursuit of the District's legislative agenda including proposed legislation to expand the District's territory.

Ms. Stone stated that the Board would adjourn into Executive Session as authorized by the Texas Government Code Section 551.071 Consultation with Attorney at 7:29 p.m. Ms. Stone stated that no final actions or decisions would be made while in Executive Session.


The Board re-convened into open session at 8:57 p.m. Ms. Stone stated that no final actions or decisions were made while in Executive Session.

6. Adjournment.

Without objection, Ms. Stone adjourned the meeting at 8:58 p.m.

Approved by the Board on April 23, 2015:

By: 
Mary Stone, President

Attest: 
Blayne Stansberry, Secretary