

**Barton Springs/Edwards Aquifer Conservation District
Board of Directors Meeting Minutes
Regular Meeting & Public Hearing
September 10, 2015**

Board members present at commencement: Mary Stone, Blayne Stansberry, and Blake Dorsett. Craig Smith arrived at 6:12 p.m. Bob Larsen was absent. Staff present: John Dupnik, Dana Wilson, Brian Smith, Brian Hunt, Kendall Bell-Enders, Vanessa Escobar, 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 6:01 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 August 27, 2015 Regular Meeting.**
3. **Approval of the effectiveness of Directors' communications with stakeholders and constituents for the 4th Quarter FY 2015 per the collective judgment of the Board, as required by the District's Management Plan.**
4. **Approval of Amendment No. 4 to the professional consulting services contract with Holland Groundwater Management Consultants, LLC, to continue to support the pending Incidental Take Permit application and other management consulting services as warranted.**

Ms. Stansberry moved approval of consent agenda items 3a. 1 – 4.

Mr. Dorsett seconded the motion and it passed unanimously with a vote of 3 to 0.

5. Discussion and Possible Action.

5e. Discussion and possible action related to District support of The Meadows Center's 319(h) grant application to study water quality in the Cypress Creek Watershed.

Dr. Jeff Thornton representing the Meadows Center, asked the Board to consider committing to \$150,000 of in-kind support to match a grant application for a Groundwater Transport Mechanism Study. He explained that the model would trace the groundwater through Jacobs Well to the Blanco River. He ended with saying that the model would be a great tool that the District could use.

Mr. Dupnik stated that there are other projects that the District may be interested in and asked the Board to give him time to look into it before making a decision on the District's level of commitment to the project.

After discussion, Ms. Stansberry moved to authorize the General Manager to negotiate and execute a contract of support for up to \$150,000 of in-kind support to the Cypress Creek Project.

Mr. Dorsett seconded the motion and it passed unanimously with a vote of 4 to 0.

4. Public Hearing (6:15)

The Board will hold a Public Hearing on an application filed by Taliaferro S. Higginbotham IV, 950 F.M. 967 Buda, TX 78610, for a Class C Conditional Production Permit to withdraw an annual permitted volume of approximately 270,000,000 gallons of groundwater from the freshwater Edwards Aquifer from an existing well located at the above address to be used for wholesale Public Water Supply only during times of non-drought.

Ms. Stone opened the Public Hearing at 6:15 p.m.

Ms. Escobar gave a presentation on the application summary, permit request, checklist requirements, User Drought Contingency Plan, and Hydrogeologic Report.

Mr. Smith asked about the first permit application received from Mr. Higginbotham.

Mr. Dupnik answered that the first application was a request for a Class A Historical Permit. He explained that since that time the permit classes have evolved, and new rules have been set in place. The new permit is for a Conditional Class C Edwards, and would require Mr. Higginbotham to curtail pumping at the first stage of drought.

Ms. Stone asked about comments received on the application.

Ms. Escobar stated that comments were received from the City of Buda and a concerned citizen. She said that it is unlikely that either of their wells would be impacted by the pumping of Mr. Higginbotham's well since the pumping would only occur during non-drought conditions.

Mr. Smith stated that we usually know who the customers are going to be.

Mr. Dupnik answered that this would be the District's first permit for a Wholesale Public Water Supply. He said that this application is unique, but believes that a reasonable compromise has been found.

Mr. Andy Barrett, attorney representing Mr. Higginbotham, stated that the customers will have to be close in proximity to the well and would prefer a customer with the capitol to put in the infrastructure. He said that the permit gives them some flexibility and time to find a customer. Mr. Barrett went further to say that they worked with staff on the permit provisions and that it was a good agreement.

There were no public comments; therefore, Ms. Stone closed the Public Hearing at 6.36 p.m.

5. Discussion and possible action.

5a. Discussion and possible action related to an application filed by Taliaferro S. Higginbotham IV, 950 F.M. 967 Buda, TX 78610, for a Class C Conditional Production Permit to withdraw an annual permitted volume of approximately 270,000,000 gallons of groundwater from the freshwater Edwards Aquifer from an existing well located at the above address to be used for wholesale Public Water Supply only during times of non-drought.

Ms. Escobar stated that staff recommends approval of the above permit with special conditions. Ms. Escobar then described each of the recommended special provisions to the Board which included the following:

1. Upon the effective date of permit and receipt of the initial permit certificate and invoice, the permittee must submit timely payment of production fees. Permittee may render payment in bi-annual installments or in an annual lump sum. Nonpayment of fees following a past-due notice may result in revocation, termination, cancelation, modification, or amendment of the permit pursuant to District Rule 3-1.13.
2. Prior to producing any groundwater from the well, the Permittee must submit documentation from TCEQ authorizing the Permittee to operate the well as a TCEQ-approved Public Water System.
3. Prior to producing any groundwater from the well, the Permittee must provide a fully-executed copy of the legal instrument(s) or contractual agreement(s) ("contract")

between the Permittee and the Permittees customer(s). The contract(s) must contain the following to be deemed acceptable by the District:

- a. A contractual demonstration of the Permittees intent to sell, lease or transfer groundwater to a named customer.
 - b. A contracted maximum annual production volume that is non-speculative.
 - c. A binding commitment demonstrating a requirement of the contracted customer to comply with complete curtailment (100%) during District-declared drought and a declaration by the customer of the customer's intent and ability to satisfy such requirements.
 - d. A binding commitment of the Permittee to enforce requirements of its customers to completely curtail (100%) water deliveries during District-declared drought.
 - e. A binding commitment demonstrating an initial and recurring annual requirement of the contracted customer to demonstrate a reliable and accessible Alternate Water Supply, as defined in Special Provision 8 below, to be available for use during District-declared drought when all of the production authorized under the Class C Conditional Production Permit is completely curtailed (100%) by the District.
 - f. A binding commitment of the customer to provide demonstration of Alternative Water Supply as required by Special Provision 8.
4. The contract documentation required by Special Provision 3 must be submitted within six months of the effective date of the permit. If the Permittee is unable to produce contract documentation deemed acceptable by the District by the end of the six-month period, the Permittee may request an extension by the Board in writing at least ten days before the end of the six-month period. The written request must include a report explaining the status of prospective contract(s) and other relevant information to support an extension. The Permittees request for a six-month extension may be denied or granted by the Board.
 5. Failure to provide the requisite contract documentation prior to expiration of the six-month period or the six-month extension, if granted, will result in expiration of the permit. Upon permit expiration groundwater produced from the well will not be authorized until a subsequent application is submitted and approved by the Board.
 6. Upon the submittal of contract documentation, the initial authorized permit volume of 270 million gallons shall be adjusted by the District to be commensurate with the actual contracted amount not to exceed the initial authorized permit volume of 270 million gallons.
 7. Upon the submittal of the contract documentation, the Permittee shall also provide:
 - a. An explanation of how that contracted volume was determined or estimated.

- b. A statement of intended use type for the produced groundwater that is consistent with wholesale Public Water Supply.
 - c. An explanation of the customer's projected demand for the immediate 5yrs.
 - d. A current map of the service area or receiving area of the customer for which the water is to be produced. The map must show the entire service area or receiving area of the customer.
8. Prior to producing any groundwater from the well and annually prior to permit renewal, the Permittee will certify and provide documentation acceptable to the District demonstrating that the customer(s) have reliable and accessible firm-yield Alternative Water Supply with a volume sufficient to meet customer's service requirements. The Permittee shall require by contract that each customer provide documentation of an Alternate Water Supply to be available for use during District-declared drought when all of the production authorized under the Class C Conditional Production Permit is completely curtailed by the District. "Alternative Water Supply" shall be considered as the sum of the customer's aggregated firm-yield supply from other non-Edwards sources that are equal or greater to the contracted volume between the Permittee and the customer. Permittee shall submit the Alternative Water Supply demonstration to the District by July 1st of each annual permit term prior to permit renewal.
9. Permittee is required to submit written notification to the District informing staff of any new contracts or cancellation, modification, or amendment of existing contracts that change or affect the volume of water supplied by permittee. The notification must be provided within thirty days after such change. Any new contract or modification or amendment of existing contracts must contain the components mentioned in Special Provision 3 above and the documentation showing compliance with Special Provision 3 shall be provided to the District with the notification required under this provision. Beginning five years after permit issuance and every five years thereafter, the District will review the volume of water permittee has contracted to provide to customers and, after notice and opportunity for hearing, shall amend the permit to adjust the permit volume to be commensurate with the then-existing contracted demand. Unless approved by the District as an amended permit, at no time may permittee exceed the amount permitted by the District.
10. Permittee shall sign and submit a Drought Target Chart within 30 days of permit issuance.
11. Permittee will update the User Conservation Plan (UCP) and the User Drought Contingency Plan (UDCP) when initial final contracts have been executed and upon entering any new contract and any contract amendments.
12. Groundwater production authorized by this permit shall not be considered a firm water supply sufficient to satisfy public water system customers' obligation to maintain a state-mandated sufficiency of water service under TCEQ Rules for public

drinking water systems pursuant to 30 TAC §290.44D and/or 291.93, or other regulations applicable to public water supply wells. Therefore, immediate threats to public health and safety or other emergencies of the customers are not valid reasons to continue production during District-declared drought.

13. If Permittee fails to meet any of the permit provisions, the District will pursue enforcement actions, including but not limited to, seeking a Board Order to revoke, suspend, terminate, cancel, modify, or amend the permit in whole or in part pursuant Rule 3-1.13 (A).

14. The permit is not eligible for annual permit renewal pursuant to District Rule 3-1.8 until the Permittee has submitted the required documentation satisfying the conditions of this permit as deemed acceptable by the District.

In summary she said that the Special Provisions grant the applicant a permit that does not exceed 270 Million Gallons per year. The District requires that the Production Fee is paid up front or in two increments, and authorized groundwater production but essentially production is delayed and contingent on the applicant's ability to meet these provisions and provide a contract. The applicant has six months to provide that contract with an extension of another six months if they are unable to do that. The contract has to meet certain prescribed criteria in order to be satisfied as acceptable to the District and if the applicant cannot meet those terms, the permit automatically expires. These draft provisions were shared with the applicant and they provided some comments back to staff. The District made every effort to address and to take into considerations those comments and essentially came up with the final version of Special Provisions. Collectively all parties were involved and a lot of time went into trying to find this balance.

After presentation of the staff's recommendation, 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 6:45 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 7:03 p.m. Ms. Stone stated that no final actions or decisions were made while in Executive Session.

Ms. Stansberry moved approval of the Class C Conditional freshwater Edwards Production Permit not to exceed 270,000,000 gallons per year with the special provisions as presented and recommended by staff.

Mr. Dorsett seconded the motion and it passed unanimously with a vote of 4 to 0.

5b. Presentation and discussion related to the District's progress and process for further defining factors to be considered for the conversion of temporary to regular production permits.

Ms. Bell-Enders gave a presentation of her literature review on unreasonable interference/impact noting that it was strictly a progress report on the current staff research to day and that no recommendations were being presented at that time.

Dr. Brian Smith gave a presentation on the Concepts for Promulgating Rules for Unreasonable Impacts between Groundwater Production Wells.

In his presentation he introduced the concept of well interference, proposed a working definition for unreasonable impacts, and further described possible regulatory concepts for projecting and regulating for potential impacts and mitigating for actual impacts to existing wells.

Ms. Stone asked what the next steps would be.

Mr. Dupnik explained that the timing is based on the process that is in place for temporary permits under HB 3405. He said that the end goal is to have some standard promulgated by rule, so that the Board has guidance to inform and facilitate permit decisions when the regular permits start coming before the Board for possible action. The deadline to submit temporary permit applications is September 19th; therefore, we should have rules in place by March. To meet this goal the objective for staff is to have draft rules for Board consideration by January, 2016 to begin the rulemaking process.

5c. Discussion and possible action related to the 84th legislative session and new legislation affecting the District.

Mr. Dugat gave a presentation on certain bills that were passed in the 84th legislative session and will affect the District including: HB 200, HB 23, HB 2767, SB 854, HB 1295, SB 1812, and HB 910. Some of the bills will require rule revisions which will be addressed in the next round of rulemaking.

5d. Discussion and possible action related to upcoming decisions on aquifer relevance and proposed Desired Future Conditions (DFCs) in Groundwater Management Area (GMA) 9.

Mr. Hunt explained that the next meeting of GMA 9 would take place on September 28th. He requested guidance on how the Board would like him to vote on the DFC for the Trinity, and the relevance of aquifers inside of other GCDs boundaries. He explained that the general consensus of the GMA is to retain the current DFC for the Trinity and to agree with other GCDs that will deem each aquifer within their boundaries as relevant or not. He also stated that there is a little sliver of Edwards in our District in GMA 9 that he feels is non-relevant for the purposes of joint planning, but would like direction from the Board.

After discussion, Mr. Smith moved to authorize Brian Hunt, the District's GMA 9 Representative, to vote to retain the current Trinity DFC, and to support other District's on their aquifers as relevant or not, and to declare the little sliver of Edwards in the Barton Springs District as non-relevant for the purposes of joint planning.

Ms. Stansberry seconded the motion and it passed unanimously with a vote of 4 to 0.

3. Routine Business.

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 activities related to annexation of the shared territory in Hays County**
- iv. **Update on efforts to assess saline Edwards desalination and ASR feasibility**
- v. **Update on the District's review of the SH 45 SW design plans**
- vi. **Update on activities related to the HCP and the associated draft EIS**


Mr. Dupnik and staff updated the Board and answered Director's questions on the items listed above.

6. Adjournment.

Without objection, Ms. Stone adjourned the meeting at 8:40 p.m.

Approved by the Board on September 24, 2015:

By: 
Mary Stone, President

Attest: 
Blayne Stansberry, Secretary