

**Barton Springs/Edwards Aquifer Conservation District
Board of Directors Meeting Minutes
Regular Meeting & Public Hearing
September 24, 2009**

Board members present at commencement: Mary Stone, Gary Franklin, and Jack Goodman. Craig Smith arrived at 6:13 p.m. and Robert Larsen was absent. Staff present: Kirk Holland, John Dupnik, Robin Gary, Brian Smith, Brian Hunt and Tammy Raymond. Bill Dugat of Bickerstaff, Heath also participated. 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 presiding in Dr. Larsen's absence called the meeting to order at 6:04 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 from the September 10, 2009 Regular meeting.**
 3. **Approval of changing the Board's regular meeting schedule to have one meeting in November 2009, on November 19, and one in December 2009, on December 17.**
 4. **Approval of out-of-state travel for Robin Gary to attend the Geological Society of America Annual meeting in Portland, Oregon, October 17-21.**

Mr. Goodman moved approval of the consent agenda as stated above, noting invoices from Blue Cross Blue Shield in the amount of \$7,163.01, and Schlumberger Water Services in the amount of \$40,202.00

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

5. Regular Meeting: New Business.

5d. Discussion and possible action related to approving a change to Hays Consolidated School District's User Drought Contingency Plan that would allow some minimal irrigation at Jack C Hays High School during drought while complying with its specific curtailments.

Mr. Dupnik explained that the High School is requesting a change to their UDCP to use their sprinkler system one day per week, on their designated water day, from 7am to 10 am. He said that staff recommended approval due to their past compliance.

After discussion, Mr. Goodman moved approval of the requested change to their UDCP.

Ms. Stone seconded the motion.

Mr. Franklin said that he appreciated their compliance but did not agree with the change.

Ms. Stone called for a vote. Mr. Goodman and Ms. Stone vote aye, Mr. Franklin voted nay, and Mr. Smith abstained due to just arriving. The vote failed.

To be fair to the permittee, staff briefed Mr. Smith on the item.

After consideration, Mr. Goodman moved to reconsider the item.

Mr. Smith seconded the motion and it passed with a vote of 3 to 1, with Mr. Franklin voting nay.

At that time, Mr. Goodman moved approval of the change to Hays Consolidated School District's User Drought Contingency Plan as stated by staff.

Mr. Smith seconded the motion and it passed with a vote of 3 to 1, with Mr. Franklin voting nay.

4. Public Hearing.

The Board of Directors will hold a public hearing on applications filed by James David and Gary Peese for a well drilling authorization and a production permit to withdraw up to 1,000,000 gallons per year from the Middle Trinity aquifer. The proposed well will be an irrigation well to be used for domestic and business irrigation needs and is proposed to be located on the applicants' residential property located at 8 Sugar Creek Rd in Austin, Texas 78746. The hearing will also address the applicant's request for a variance to Rule 3-1.4, concerning applications approved during District declared drought. The variance request, if approved, would allow for use of the proposed well during the current District-declared drought.

Ms. Stone opened the Public Hearing at 6:28 p.m.

Mr. Dupnik briefed the Board on the applications filed by Mr. David and Mr. Peese.

Ms. Sarah Faust of Save Our Springs Alliance, stated that the District would be setting a precedent if they granted pumping during drought, and requested specific language to the variance if approved.

With no other public comments, Ms. Stone closed the Public Hearing at 6:35 p.m.

5a. Discussion and possible action related to applications filed by James David and Gary Peese for a well drilling authorization and a production permit to withdraw up to 1,000,000 gallons per year from the Middle Trinity aquifer by a well on their property at 8 Sugar Creek Rd, Austin Texas, and to a requested variance to Rule 3-1.4 for operating the well.

Mr. Dupnik stated that staff recommended approval for \$800,000 gallons with an attachment G. to Isolate the Middle Trinity, along with special conditions. He said that the well could give valuable data to the District.

Mr. Bill Stein of LBG Guyton & Associates, stated that the well would be within the Balcones fault zone and would not impact any other wells in the area. They are asking for one million gallons and less than that would impact them during drought when curtailment is necessary.

Mr. James David stated that he did not have an estate, but worked for 30 years on his gardens. He said that if he could not have one million gallons that he might not want to spend up to \$75K on a well that may not produce good water.

Mr. Smith asked if they the need for the variance with the recent rainfall.

Mr. David stated that he did not know.

Ms. Stone said that the data collected from the well could be a great benefit and would relieve the Edwards Aquifer.

Mr. Franklin stated that the data would be good, but the District rules state that there will be no watering with sprinklers during drought and that it would send the wrong message.

Mr. Holland stated that the District received the following written comments.

Opposed:

Ann Kilby
John Cole
Cheri Shine
John Marznick
Dianne Thompson

Dale Bulla

For:

Jeff Delaney supported the application if no other wells are impacted.

Mr. Smith moved to approve the well drilling and production permit for 800,000 gallons with special condition stated by staff.

Mr. Goodman seconded the motion and it passed with a vote of 3 to 1 with Mr. Franklin voting nay.

Mr. Smith moved to deny the variance requested.

Mr. Franklin seconded the motion and it passed with a vote of 3 to 1 with Ms. Stone voting nay.

6. Regular Meeting: Continued Business.

6a. Discussion and possible action related to the intent and interpretation by the Board of its just-adopted rule concerning the one-year extension of time for certain permittees to completely curtail pumpage during ERP, specifically as to when that one year period starts and ends.

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 deliberate or take any action on them in this meeting, unless the topic is specifically listed elsewhere in this as-posted agenda.

1. Personnel matters, current staff work areas, and utilization
2. Upcoming public events of possible interest
3. Aquifer conditions and status of drought indicators.

Mr. Holland reported on the items above.

b. Discussion related to 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.

1. Update on GMA-9 and GMA-10 progress and issues in establishing Desired Future Conditions.
2. Update on developments associated with the prospective desalination facility in the eastern part of the District.

3. **Update on the drought education and outreach campaign.**
4. **Update on the website redesign and roll-out.**
5. **Update on discussions associated with the possible use of treated effluent as an alternative water supply for certain uses by District permittees.**

Mr. Holland and staff updated the Board on the teams' activities concerning the items listed above. None of these topics were moved to the regular agenda for possible action, as no action was required.

6a. Discussion and possible action related to the intent and interpretation by the Board of its just-adopted rule concerning the one-year extension of time for certain permittees to completely curtail pumpage during ERP, specifically as to when that one year period starts and ends.

The Board discussed what the various directors' individual understanding and intentions with respect to the new rule adopted at the last meeting as to when the clock starts on the one-year period before the non-PWS may be completely curtailed. Mr. Holland described what was in the physical record.

Ms. Stone said she thought it started upon declaration of an ERP.

Mr. Smith reminded the Board that in the last meeting he didn't want *any* delay and would certainly not support a delay until ERP was declared.

Mr. Goodman stated that in his motion he was aware that the clock started when the rule went into effect on September 10, 2009 and not when we went into ERP status.

Mr. Franklin agreed.

5c. Discussion and possible action related to filing a brief on an upcoming AG opinion addressing overlapping GCD jurisdictions.

After discussion, Mr. Smith moved to direct the District's counsel to prepare a letter brief to the AG concerning an upcoming opinion as to overlapping jurisdictions of GCDs; the brief will describe the existence of such situations in our District and the common ways such things can occur, and is not to cost more than \$2000.

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

5b. Discussion and possible action related to the outlook for aquifer conditions and a possible change to the District's declared drought stage.

No action was taken by the Board.

5e. Discussion and possible action on an *ad hoc* Well Construction Standards Technical Advisory Committee.

The Board reviewed the list of identified prospective members of the Well Construction Standards Technical Advisory Committee, considered the status of who had committed and who hadn't been heard from yet, and decided to not vote to accept that list of committee members until all candidates have been heard from, returning the item to the agenda of a future meeting.

5f. Discussion and possible action related to addressing the TCEQ-proposed watershed rules for direct-discharging of treated effluent to the Barton and Onion Creek watersheds, including the Contributing and Recharge Zones of the Edwards Aquifer.

Mr. Holland, Mr. Dupnik, and Mr. Dugat reported on TCEQ's draft rule and associated stakeholder meeting for direct discharges in Barton and Onion Creek watersheds, and our concerns about both the process and the substance of the rulemaking that is underway.

Mr. Dupnik and Mr. Dugat will present the Board's concerns to the TCEQ staff in the stakeholder meeting on September 30th. No Board action was required.

6. Regular Meeting: Continued Business.

6b. Discussion and possible action related to the Critical Stage Drought management program of the District, including 1) compliance by District permittees with their User Drought Contingency Plans, and 2) developments concerning the agreed order with Ridgewood Village Water Systems and other enforcement action for non-compliant permittees, including possible initiation of additional enforcement actions as warranted.

Mr. Dupnik updated the Board on the permittees compliance with their User Drought Contingency Plans.

The Board took no action.

6c. Discussion and possible action related to status and progress on the contested-case SOAH proceedings associated with the TCEQ preliminary decision on the TLAP for Jeremiah Venture, L.P.

Mr. Dugat gave a brief update on the status of the Jeremiah Venture contested case and settlement discussions, noting that the ALJ had accepted the Abatement Request and that efforts and discussions were now focused on arriving at a settlement agreement among the parties, rather than pursuit of the contested case. No Board action was required.


6d. Discussion and possible action related to status and progress on the contested-case before the District associated with the City of Kyle permit amendments. [Note: no action on approving or not approving these amendments will be taken in this meeting.]

There was no discussion or action needed concerning the Kyle contested-case hearing.

7. Adjournment.

Dr. Larsen adjourned the meeting at 8:37 p.m.

Approved by the Board:

By: 
Dr. Robert D. Larsen, President

Attest: 
Gary Franklin, Secretary