

**MINUTES OF THE OCTOBER 14, 2014  
BOARD OF DIRECTORS MEETING OF  
NORTH PLAINS GROUNDWATER CONSERVATION DISTRICT**

The Board of Directors of North Plains Groundwater Conservation District met in regular session October 14, 2014, at 9:00 a.m. in the Conference Room of the Hampton Inn, 2010 South Dumas Avenue, Dumas, Texas 79029. The following persons were present:

**Members Present:**

Bob Zimmer; President  
Danny Krienke, Secretary;  
Gene Born, Director;  
Justin Crownover, Director;  
Harold Grall, Director; and  
Zack Yoder, Director.

**Staff Present during part or all of the meeting:**

Steve Walthour, General Manager;  
Dale Hallmark, Assistant General Manager and Hydrologist;  
Kristen Lane, Executive Assistant; and,  
Kirk Welch, Assistant General Manager/Outreach.

**Others present during part or all of the meeting:**

Sabrina Leven;  
C. C. Sysmobath;  
Emmett Autrey;  
Scott Clawson;  
Steve Yoder;  
F. Keith Good, Attorney;  
Haley Rader, Attorney; and  
Ellen Orr, Paralegal.

President Zimmer declared a quorum present and called the meeting to order at 9:02 a.m.

Director Gene Born gave the invocation and President Zimmer led the pledge.

President Zimmer asked if there were persons present who desired to make public comment. No public comment was made.

Danny Krienke moved to approve the Consent Agenda items 2a – 2c, including the review and approval of the Minutes of the regular Board Meeting held on September 15, 2014; the review and approval of Minutes of the Finance & Budget Committee Meeting held on September 26, 2014; the review and approval of un-audited District expenditures for September 1, 2014 through September 30, 2014, including the General Manager's Expense and Activity report; and the approval of payment to Lemon, Shearer, Phillips and Good, P.C. in the amount of \$12,418.02 for professional services rendered and out-of-pocket expenses from September 1, 2014 through September 30, 2014. Zack Yoder seconded the motion and it was unanimously approved by the Board.

Harold Grall moved to go into Executive Session in compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, §551.071, to obtain legal advice from its attorney regarding various pending legal matters. Gene Born seconded the motion and it was unanimously approved by the Board.



Executive Session: At 9:08 a.m., the Board went into Executive Session to seek legal advice from its attorney. At 9:44 a.m., Director Harold Grall moved that the Board reconvene into regular session. Gene Born seconded the motion and it was unanimously approved by the Board.

The Board reconvened into regular session at 9:45 a.m.

The General Manager and the District's General Counsel noted the following observations for consideration by the Board:

In 2012, the District annexed the Priority Groundwater Management Area (PGMA) in Dallam County as directed by the Texas Commission on Environmental Quality. The District held an election for the voters in the PGMA areas to vote on whether or not to approve a tax levy for the maintenance tax the rest of the district pays. An overwhelming majority of the votes cast at the election were against the levy of a maintenance tax. Section 36.0171(h) directs that if the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set production fees in accordance with Section 35.013(g-1) to pay for the District's regulation of groundwater in the District, including fees based on the amount of water to be withdrawn from a well.

According to Texas Water Code Chapter 36 Section 36.205(c), a district may assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may assess the fees in lieu of, or in conjunction with, any taxes otherwise levied by the district. A district may use revenues generated by the fees for any lawful purpose. Production fees shall not exceed:

- (1) \$1 per acre-foot payable annually for water used for agricultural use; or
- (2) \$10 per acre-foot payable annually for water used for any other purpose.

General Counsel for the District recommended that initial Production Fees for the three PGMA areas in Dallam County, Texas be set by Rule. Mr. Good also stated that he recommended that the District Manager and the District staff determine the cost for the District to operate in the PGMA areas and to bring that information back to the Board for its consideration in setting Production Fees for the areas.

Harold Grall moved that the General Manager of the District and his staff determine the cost of running the PGMA areas and bring that information back to the Board at its next meeting, as well as, conferring with the District's General Counsel to develop a proposed Rule draft which would set Production Fees for the Board's review, discussion and consideration. Gene Born seconded the motion and it was unanimously approved by the Board.

In June, the Texas Water Development Board approved a grant for equipping irrigation wells with meters. Dale Hallmark worked with the General Manager, the Texas Water Development and the District's legal counsel in the construction and revision of the TWDB/District contract. During the last week of September, 2014 an amended contract acceptable to District staff, TWDB staff and the District's legal counsel was submitted to the TWDB's Contract Review Department for approval. Mr. Walthour stated that the District has until October 31, 2014 to execute the contract. Dale Hallmark stated that the reimbursement applies solely to the cost of the meter and does not cover any installation costs of the meter.



Danny Krienke moved to approve the TWDB/District amended contract for meter reimbursement effective June 26, 2014. Harold Grall seconded the motion and it was unanimously approved by the Board.

In September, the Board directed the General Manager to amend the 2013-2014 budget if necessary, based on consultation with the auditor and report any changes to the Board for review. At the end of each fiscal year, the Board requires that the District's auditor perform a financial audit of the District's operations. As a result of the audit, and in consultation with the auditor, the District may be compelled to amend its financial records pursuant to fiscal policy, state and/or local law.

In consultation with the auditor, the General Manager has amended the 2013 – 2014 budget to show the value of the receipt of property at the Water Conservation Center (WCC) for \$66,000.00 and the sale of property at the WCC for \$66,000 in completing management of the WCC from Texas AgriLife to the District. Since some unused funds were still available in Capital Outlay, the General Manager credited sale of assets for \$66,000 and raised the budget under Capital Outlay by \$58,000.00 from \$292,000.00 to \$350,000.00 to cover the transaction at the WCC.

The General Manager reported a miscalculation of miscalculated the amount of funds needed to address Personnel Expenses at the end of the fiscal year. The General Manager amended the Personnel budget by \$8,000 raising the total budget from \$1,085,845.00 to 1,093,845.00. These amendments raise the total operating budget by \$66,000.00 for 2013-2014 to \$3,131,455.00.

Harold Grall moved that the Board ratify the General Manager's actions as described above. Gene Born seconded the motion and it was unanimously approved by the Board.

The General Manager presented the following report regarding the District's 200-12 Demonstration Program and the High Plains Initiative:

## **200-12**

The 2014 200-12 Demonstration Project is in full swing. All ten producers have corn in the starch stage. AquaSpy® has completed the installation of all soil moisture probes. All probes appear to be fully functional. Better Harvest has collected plant samples and began making fertilizer recommendations.

## **EPIC**

The Extension Agents are continuing to monitor their demonstration sites. All of the county agents participated in the irrigation field days during the week of September 8<sup>th</sup>.

Danny Krienke asked the Board if any member had any concerns with how the 200-12 program runs? Mr. Krienke then stated that he believed that the District should take it to the next level and let Leon New take over the pivot under a portion of the demonstration field.

Justin Crownover stated that he had concerns with the District taking over the pivot on a demonstration field – specifically, that he would have a concern about yield.

Danny Krienke stated that this was not for everybody—that some won't take the risk and that you are just taking a controlled vs. managed side.

Harold Grall asked if you thought that you could actually get people to sign up for this?



Bob Zimmer stated that District staff should do a comprehensive analysis of EPIC. Mr. Zimmer also stated that over the next five years that we need a more detailed analysis of the 200-12 Program.

Harold Grall stated the in his opinion, EPIC has run its course --- the County Agents run that program.

Steve Walthour stated that the District will spend time on an upfront-audit this year and that Leon has never had anything to do with the EPIC program.

Danny Krienke stated that we need more than a final report on the 200-12 Program. We need to know if the probes are out, functional, etc. There is really no information as to how data is being collected.

The Board recessed at 11:02 a.m. and reconvened at 11:15 a.m.

The General Manager reported that Texas Water Conservation Association (TWCA) and Texas Alliance of Groundwater Districts (TAGD) started working on proposed legislation for the upcoming Texas Legislative Session. TWCA has been proactive in developing proposed legislation as follows:

#### **TWCA Permitting Renewal Draft Legislation**

The proposed bill can be summarized as follows:

- Adds the definition of "Operating Permit" to mean any type of permit issued by a district that relates to the operation or production from a well, and may also include authorization to drill or complete a well if the district does not require a separate drilling permit.
- Makes a conforming change to Section 36.113(d) to account for the addition of the renewal language in Section 36.1145 and clarifies in Section 36.113(f) that a district rule may not require renewal of a permit inconsistent with the new language in Section 36.1145.
- Adds language to Section 36.114(b) and (c) to make clear that renewals governed by the new provision in Section 36.1145 are not subject to district rules that determine whether a hearing on a permit or permit amendment application is required.
- Adds new Section 36.1145(a) to require that a permit be renewed without a hearing before permit expiration if certain conditions are met, including: (1) any permit renewal application fees are paid in a timely manner; and (2) the permit holder does not request any change to the permit that would require a permit amendment.
- New Section 36.1145(b) provides that a district is not required to renew a permit if the permit holder: (1) is delinquent in paying fees to the district; (2) is subject to a pending district enforcement action for substantial violation of the permit, order, or district rule that has not been settled with the district or by final adjudication; or (3) has not paid a penalty or complied with a final non-appealable decision that the permit holder violated a permit, order, or rule.
- New Section 36.1145(c) governs the process when a permit holder requests a change to the permit at the time of permit renewal, and requires that the existing permit remain in effect until the later of: (1) the conclusion of the permit amendment process; (2) the conclusion of the permit renewal process, if



applicable; or (3) a final settlement or adjudication of a legal proceeding on the issue.

- New Section 36.1145(d) provides that a permit will remain in effect until conclusion of any enforcement action for a substantial violation of a district permit, order, or rule that has not yet been settled by agreement or final adjudication.
- New Section 36.1145(e) requires a district to give the permit holder the chance to renew the permit as it existed before the permit amendment process if the district denies a permit amendment request.
- New Section 36.1145(f) provides that a district may initiate an amendment to an operating permit, through the renewal of a permit or otherwise, in order to achieve the purposes of Chapter 36, and that if a district initiates an amendment to a permit, then the existing permit will remain in effect until the later of: (1) conclusion of the permit amendment process; or (2) conclusion of the permit renewal process, if applicable.
- Makes a conforming change to Section 36.402 to refer to applications for which a hearing is required due to the addition of the new permit renewal process in Section 36.1145.
- Requires districts to amend their rules to be consistent with the bill as soon as practicable after the effective date of the bill, and also makes clear that the provisions of the bill apply only to permit renewals initiated by a district or a permit holder on or after the effective date of the bill.
- Provides that the effective date of the bill is September 1, 2015.

#### **TWCA TDLR Legislation**

A summary of the draft TDLR legislation is as follows:

- Provides the TDLR with the statutory authority to create an apprentice water well driller program and an apprentice pump installer program.
- Gives the TDLR the authority to establish a Fields Operation Program to leverage TDLR's existing resources.
- The Field Operations Program would enable TDLR to enter into a memorandum of understanding with certain state agencies, political subdivisions of the state, and municipalities to have qualified employees trained by the TDLR assist TDLR with enforcement efforts.
- Require the supervision of a licensed water well driller in any recompletion, perforation, and conversion of an oil and gas well into a water well.
- Amends Chapter 1901 and 1902 of the Occupations Code to make revisions to the examination and license application process for water well drillers and pump installers.
- Adds "closed-loop" geothermal well drillers to the definition of water well driller under Chapter 1901 of the Occupations Code.

#### **TWCA State Auditor Office Repeal Bill**

In 1997, there was concern that some of the GCDs were not doing anything to manage the resource. At the time, these districts were referred to as "shell districts." In SB 1, the



Legislature decided to leave groundwater management in the hands of GCDs, but to take steps to ensure that groundwater was actively managed. SB 1 established the requirement the GCDs to management plans, and set forth some of the required content of management plans. SB1 also included a provision in Chapter 36 that required the state auditors to audit GCDs to make sure that they were “actively engaged in achieving the objectives of (their) management plan(s).” This was aimed at ensuring that the shell districts actually did something to manage the groundwater resources as entrusted to them by the legislature.

The State Auditor’s Office (SAO) process never did work out as intended. With the passage of HB 1763 in 2005 and SB 660 in 2011, the TCEQ process was established to make sure that GCDs are doing what they are supposed to do. TCEQ has the authority to confront and enforce corrective action on districts for failure to submit or timely update a management plan; failure to adopt rules; failure to adopt applicable DFCs; failure to timely update rules that will achieve and implement DFCs or enforce those rules; failure of a district to adequately protect groundwater in the GMA; etc. TCEQ enforcement is more comprehensive in guarding against shell districts, and the TCEQ is much better-equipped to do such a review than the SAO. The SAO process has really done nothing more than turn into a pain for GCDs to make sure all of their i’s are dotted and their t’s crossed in financial and management controls, and has served as a disincentive towards meaningful management plans in most cases. Instead of GCDs setting high goals in their management plans to use and using them as a good strategic tool for the board to set expectations of staff and evaluate that performance at the end of each year, they instead usually aim low in the performance measures and metrics because no one wants to not meet their goal and be criticized by SAO. The SAO just doesn’t appear to be qualified to do any meaningful review of groundwater management. Moreover, the entire history of use of performance metrics by state agencies who get their funding from the legislature, who demanded performance in exchange for appropriations requested, just doesn’t fit in to the GCD structure in state government. There’s no funding from the legislature for GCDs, and there’s no involvement with organizations like the Legislative Budget Board, who negotiate the numbers on the front end with state agencies (who often perform in the 70-75% range on their metrics). It just doesn’t fit.

The SAO audit requirement is has outlived its useful life. The TCEQ review process that has since been established has rendered the SAO audit needless and overly-burdensome. The attached proposed bill will end the practice.

#### **TWCA –ASR Draft Legislation**

A summary of the legislation is as follows:

- Amends Chapter 11, Water Code, to eliminate the need for pilot ASR projects.
- Clarifies that no additional surface water right amendment is needed to store appropriated surface water in an ASR project prior to beneficial use, so long as the surface water is otherwise diverted and used in accordance with the terms of the water right.
- Amends Chapter 27 (injection wells) to provide that TCEQ has exclusive jurisdiction over injection wells for ASR projects. TCEQ can authorize by rule, general permit, or individual permit.
- TCEQ considers whether the applicant demonstrated: (1) whether the injection of the water will comply with standards set forth under the federal Safe Drinking Water Act; (2) the extent to which the cumulative volume of water injected for storage in the receiving geologic formation can be successfully recovered from the geologic formation for beneficial use, taking into account that injected water



may be commingled to some degree with groundwater native to the receiving geologic formation; (3) the extent to which existing water wells may be impacted by the ASR project; and (4) the potential for groundwater quality degradation.

- TCEQ must limit the amount recovered to the amount injected, and will further limit the amount that can be recovered if there will be losses that are unrecoverable.
- GCDs get notice of individual permit applications.
- TCEQ by rule shall adopt well construction, completion, metering, and reporting requirements.
- The ASR project must report total injected and recovered amounts monthly to TCEQ and the GCD. TCEQ shall require annual water quality testing of injected water and recovered water, and testing results are provided to TCEQ and the GCD.
- ASR wells must be registered with the GCD, and pay any GCD registration fees.
- If the ASR project produces more than it injects, so that it is producing native groundwater, the GCD's spacing, production, and permitting rules apply to the ASR project's production of native groundwater. A GCD's production fees and transport fees would also apply to production of such native groundwater.
- GCDs may consider hydrogeologic conditions related to the injection and recovery of water in an ASR project in planning for and monitoring their achievement of an applicable desired future condition for an aquifer where an ASR project is located.
- Provides that the new legislation does not impact the ability to regulate ASR projects under the enabling acts of the EAA, the Subsidence districts, and the BSEACD.
- Provides that TCEQ shall not adopt or enforce groundwater quality protection standards for the quality of water injected in an ASR injection well that are more stringent than applicable federal standards.
- Provides that TCEQ will adopt rules to implement the new legislation by May 1, 2016.
- There is still some question regarding the interplay of the bill draft and some other statutory provisions.

### **TWCA Brackish Bill**

The TWCA is attempting to draft a bill that can bring the groundwater conservation districts together with the parties interested in developing brackish water resources. TWCA has not been successful so far. There will be a brackish water bill. It will probably be carried by SAWS. Greg Ellis is trying to find a happy median. Here is his proposal as follows:

- Petition is filed with the district to declare a certain groundwater management area as a brackish groundwater zone.
- Petition is immediately forwarded to TWDB for evaluation.



- TWDB investigates the petition (model runs and hydrogeologic assessment—whatever TWDB determines is appropriate)
- TWDB files a report with the district recommending either the petition be granted, denied, or granted with alterations (different geographic footprint, different depth, etc.).
- District publishes notice for a public hearing on the petition and TWDB Report/Recommendation.
- If no protests are filed, board acts on the petition.
- If one or more protests are filed the board refers the matter to a contested case hearing. The protestants must present scientific evidence to contravene the TWDB report.
- Following the evidentiary hearing the board holds a final hearing and acts on the petition.
- The board's decision (following a motion for rehearing) may be appealed to District Court.

The General Manager recommended that the Board support the TWCA Permitting Renewal Draft Legislation, the TWCA TDLR Legislation, and the TWCA State Auditor Office Repeal Bill.

Justin Crownover moved that the District support the TWCA Permitting Renewal Draft Legislation, the TWCA TDLR Legislation, and the TWCA State Auditor Office Repeal Bill as recommended by the General Manager. Harold Grall seconded the motion and it was unanimously approved by the Board.

Harold Grall presented a report regarding the North Plains Water Conservation Center. Mr. Grall stated that the Well at the facility's pumping capacity is 320 to 325 GPM and that the sprinkler is not pressuring up. Leon New wants 10 pounds on each end and it only has 7. No pipe has been tied. Electricity should be hooked up this week. Jackie Rudd will be planting wheat possibly this week or next week. No wheat has been planted on the dryland yet. Leon New is concerned about the heavy wheat mat on the property. The weed mat on the irrigated portion of the property has had to be double-shredded. Dave Reinhart ran a soil sample on the property and it is low on phosphate. It was Mr. Grall's opinion that the entire property needed to be spread with manure to obtain a better phosphate level to grow crops. Mr. Grall stated that the RFP was out for the property. We need assurance on the amount of water that is available when the other sprinkler is operating. Bob Zimmer stated that the new Well needed to be pumped for 3 or 4 days to see its capacity. Danny Krienke stated that according to Leon New, the bowls in the old Well are past their curve. Mr. Krienke asked Mr. Grall if the bowls had been pulled? Mr. Grall replied, no. The General Manager requested that the Board move the RFP deadline date from October to November. By consensus of the Board, the RFP deadline date was moved from October to December 1, 2014.

Dale Hallmark presented the "2014 Hydrology and Groundwater Resources Report". Mr. Hallmark stated that the Report provides an overview of the District's water resources. It gives a short history of the District, its boundaries, how areas were added over time and information on the general geology of the aquifers. The report delves into recharge and inflows that occur into and out of the aquifers. It also lists annual groundwater production since 2008 and compares declines in monitor wells to declines calculated from production volumes. The report has three map sections in the back, one section of maps showing average depth to water for each county, another section on declines and a



third section showing saturated material maps. Our management plan calls for updating the saturated material maps every other year and these are new maps created in 2014. The next update to the saturated material maps is due for the fall of 2016. The Hydrology & Groundwater Resources 2013-2014 report which was presented to the Board by Mr. Hallmark is attached hereto as Exhibit "A" and is incorporated herein as though set forth verbatim.

Steve Walthour presented the General Manager's Report, including information concerning upcoming meetings and conferences and the General Manager's activity summary.

Assistant General Manager, Kirk Welch, was recognized for five years of service.

District Directors reported to the Board regarding meetings and/or seminars attended, weather conditions and economic development in each Director's precinct.

President Zimmer set the next regular Board Meeting at 9:00 a.m. on November 18, 2014.

Justin Crownover moved to adjourn the meeting. Harold Grall seconded the motion and it was unanimously approved by the Board. President Zimmer declared the meeting adjourned at 12:34 p.m.

  
Bob B. Zimmer, President

  
Daniel L. Krienke, Secretary