

**MINUTES OF THE SEPTEMBER 13, 2016
BOARD OF DIRECTORS MEETING OF
NORTH PLAINS GROUNDWATER CONSERVATION DISTRICT**

The Board of Directors of North Plains Groundwater Conservation District met in regular session September 13, 2016, at 9:00 a.m. in the Conference Room of the North Plains Water Conservation Center, 6045 County Road E., Etter, Texas. The following persons were present:

Members Present at 9:05 a.m.:

Danny Krienke, Secretary;
Gene Born, Director;
Harold Grall, Vice-President;
Justin Crownover;
Mark Howard and,
Zac Yoder, Director.

Staff Present during part or all of the meeting:

Steve Walthour, General Manager;
Kirk Welch, Assistant General Manager/Outreach;
Kristen Lane, Executive Assistant;
Laura West, Production Monitoring Coordinator;
Casey Tice, Compliance Coordinator;
Odell Ward, GIS Lead Technician/Natural Resource Specialist; and,
Alyssa Holguin, Conservation Outreach Assistant.

Others present during part or all of the meeting:

Shelly C. Burnett;
Scott Clawson;
Franz Schmitt;
Jacob Schmitt;
F. Keith Good, Attorney; and,
Ellen Orr, Paralegal.

Vice-President Grall declared a quorum present and called the meeting to order at 9:05 a.m. Vice President Grall gave the invocation and led the pledge.

The regular Board meeting was recessed at 9:05 a.m. for Show Cause Hearing No. 001-016 in re: Robert Spielman.

The regular Board meeting was reconvened at 9:25 a.m.

Karen Mannis, Natural Resource Specialist, was recognized for ten years of service.

1 – Public Comment

No public comments were received.

2 – Consent Agenda

The Consent Agenda was discussed by the Board and consisted of: the review and approval of the Minutes of the regular August 5, 2016 Board Meeting; the review and approval of the Minutes of the regular August 31, 2016 Board Meeting; the review and approval of un-audited District expenditures for August 1, 2016 through August 31, 2016, including the General Manager's expense and activity report; and the review and approval of payment to Lemon, Shearer, Phillips & Good, P.C. for professional services

and out-of-pocket expenses from July 1, 2016 through August 31, 2016, in the amount of \$15,374.06. Gene Born moved to approve the Consent Agenda. Mark Howard seconded the motion and it was unanimously approved by the Board.

Executive Session - Section 551.071 of the Texas Government Code.

At 9:30 a.m., Zac Yoder 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. Danny Krienke seconded the motion and it was unanimously approved by the Board.

Executive Session: At 9:30 a.m., the Board went into Executive Session. At 9:54 a.m., Director Gene Born moved that the Board reconvene into regular session. Danny Krienke seconded the motion and it was unanimously approved by the Board.

The Board reconvened into regular session at 10:00 a.m.

Action Agenda 3a - Consider action regarding Show Cause Hearing.

The Board considered the testimony and evidence which was presented by the District at the Spielman Show Cause Hearing. Danny Krienke moved to authorize legal counsel to enforce the District's Rules against Robert Spielman for breach of an August 11, 2014 Settlement Agreement with the District and for failure to timely file three (3) 2015 annual production reports. Gene Born seconded the motion and it passed by the majority vote of the Board with Mark Howard opposing the motion.

Action Agenda 3c - Consider final compliance approval of Water Well Permits as active and complete wells.

District Rule 2.13 provides, after the site inspection is complete and it is determined that the Well (and all Wells within the Groundwater Production Unit) are in compliance with the Rules of the District and the Well Permit application, the General Manager shall submit the Well Permit to the Board for final compliance approval.

The General Manager reported that the District staff had processed 55 Water Well Permits which are ready for Board consideration and approval. These permits, listed in the table below, represent completed Wells that have been inspected and are in compliance with District Rules. The inspections verify that the Wells were completed as required by the respective Permits, including proper Well location, Well classification, maximum yield, and proper installations of check valves and flow meters. Copies of the individual permits were presented to the Board.

Well Num	Class	Sec	Blk	Sur	NS
DA-5075	A	3	0	A CANTON	1315 N
DA-7947	C	39	4	CSS	115 S
DA-8364	C	50	7	CSS	878 S
DA-8923	B	13	4	CSS	42 N
DA-9392	B	9	48	H&TC	458 S
HA-6343	C	213	44	H&TC	184 N
HA-7281	B	3	5	CSS	367 S
HA-8855	C	97	48	H&TC	413 N
HA-8882	D	96	48	H&TC	859 S
HA-9007	D	106	48	H&TC	445 S
HA-9148	D	297	44	H&TC	855 S
HA-9149	D	297	44	H&TC	476 N
HA-9150	C	297	44	H&TC	221 N
HA-9275	C	1	16	CSS	264 N
HA-9276	C	1	16	CSS	636 N

HA-9277	C	2	16	CSS	808 S
HA-9278	C	2	16	CSS	130 N
HA-9352	C	22	12	CSS	449 S
HN-7344	D	31	1	WCRR	736 N
HN-7721	B	110	45	H&TC	755 S
HN-7852	C	226	2	GH&H	233 N
HN-8536	D	1	2	SA&MG	867 N
HN-8830	C	55	2	GH&H	36 N
HN-9060	D	140	45	H&TC	769 N
HN-9176	B	49	1	WCRR	287 S
HN-9177	B	49	1	WCRR	100 S
HU-6994	D	109	5-T	T&NO	102 S
HU-8971	C	6	1	BBB&C	489 S
MO-1431	B	352	44	H&TC	280 N
MO-5127	C	151	3-T	T&NO	807 N
MO-6718	C	350	44	H&TC	14 S
MO-6736	A	321	44	H&TC	451 N
MO-7260	B	22	2-T	T&NO	22 S
MO-7373	C	137	3-T	T&NO	574 N
MO-7539	C	430	44	H&TC	363 S
MO-9057	D	415	44	H&TC	21 S
MO-9470	C	7	Q	H&GN	82 N
OC-7213	B	25	4	GH&H	869 S
OC-9325	A	829	43	H&TC	745 N
SH-4823	D	39	3-T	T&NO	731 S
SH-5692	B	35	3-T	T&NO	404 S
SH-5695	D	24	2-B	GH&H	491 N
SH-6801	B	45	3-T	T&NO	28 N
SH-7901	C	10	3-T	T&NO	305 S
SH-8380	B	139	1-T	T&NO	383 N
SH-8975	C	177	1-C	GH&H	868 S
SH-9031	B	269	1-T	T&NO	692 S
SH-9259	B	109	1-T	T&NO	135 S
SH-9260	B	109	1-T	T&NO	645 S
SH-9261	B	109	1-T	T&NO	613 N
SH-9262	B	109	1-T	T&NO	106 N
SH-9457	B	40	2-B	GH&H	119 N
SH-9458	B	40	2-B	GH&H	518 N
SH-9459	B	40	2-B	GH&H	880 S
SH-9460	B	40	2-B	GH&H	639 S

The General Manager requested that Well Permit OC-7213 be removed from the Well Permit Schedule to be considered by the Board. By consensus of the Board, Well Permit OC-7213 was removed from the Well Permit Schedule.

Danny Krienke moved to approve Well Permit MO-6718 on the above schedule noting that the Well is properly equipped and otherwise complies with District Rules. Gene Born seconded the motion and it passed by a 5-0 vote with Harold Grall abstaining from the vote.

Danny Krienke moved to approve all of the remaining Well Permits on the above schedule noting that the Wells are properly equipped and otherwise comply with District Rules. Mark Howard seconded the motion and it was unanimously approved by the Board.

Action Agenda 3d - Receive and consider Dallam County non-taxed area Production Fees to pay the Area's Share of District administration and services.

The General Manager reported that 2016 is the first year that the District has collected production fees from the Dallam County untaxed area to pay for the District's regulation of groundwater in that area.

In August 2013, the the Dallam County Priority Groundwater Management Area was annexed by the North Plains Groundwater Conservation District pursuant to Title 2, Texas Water Code (TWC), Chapters 35 and 36. The District held an election for the residents within the annexed area to cast votes for the levy of an ad valorem tax to pay for the District's regulation of groundwater in the areas. Ad valorem taxes allow the cost of District operations to be shared by all owners in an area that choose to be taxed based upon the owner's property values, regardless of the amount of groundwater used, or whether the landowner uses water in the area. The majority of the votes cast in the election were against the levy of an ad valorem tax. In voting not to pay taxes, the community tasked the non-exempt well owners to shoulder the burden for the area's share of the District's operations. TWC Section 35.031(g) provides that if the majority of the votes cast at the ad valorem tax election are against the levy of a maintenance tax, the District shall set fees authorized in accordance with TWC Section 35.013(g-1) to pay for the District's regulation of groundwater in that area.

Accordingly, the Board set fees of \$1.00 per acre foot on non-exempt groundwater produced for agricultural purposes and \$5.00 per acre foot on all other non-exempt properties, starting with Groundwater Production Year 2015.

The General Manager performed an analysis of the total production fees compared to the taxpayer costs for District services in other areas of the District. The analysis includes: a share of the estimated assessed value of the Dallam PGMA; a share based on the land area in the PGMA and taxes paid in the remainder of Dallam County; and, a share based on the land area in the PGMA paid on land by the rest of the District through ad valorem tax. The land area within the Dallam PGMA represents approximately 26.31 percent of the Dallam County area and 5.69 percent of the total District area.

Year	Share based Estimated Assessed Value of Dallam PGMA	PGMA Share Based on Percent of Dallam	PGMA Share Based on percent of District Taxes	Production Fees Collected
2014	\$22,184.29	\$51,778.39	\$116,307.30	\$0
2015	\$21,246.37	\$48,798.62	\$119,370.11	\$0
2016	\$28,134.76	\$55,832.61	\$124,451.60	\$71,937.50

The analysis showed that if the Dallam County PGMA area had voted to be taxed, the total amount of taxes would have been less than fees collected. The District has collected approximately \$71,937.50 in fees from the area. Presently, two parties have not paid the production fee.

The analysis did not compare an individual's production fees to what the individual would have paid in ad valorem taxes. For non-exempt groundwater withdrawals, industrial or residential land owners generally could have paid more in taxes than they paid in fees, while an agricultural irrigation user would pay less in taxes than he or she paid in fees for groundwater produced. In 2016, District staff erroneously billed a landowner that had joined the District in 2013 through the annexation process and agreed to pay ad valorem taxes to the District. The landowner's ad valorem tax share was approximately ten percent of what that owner was erroneously billed for his agricultural production.

The General Manager recommended no change in the District's production fees at this time. If the Board desires to change the fee structure for future years, the General Manager recommended that the fees be amended before any groundwater is produced.

Zac Yoder moved that the production fee of \$1.00 per acre foot on non-exempt groundwater produced for agricultural purposes be reduced to \$.50 per acre foot on non-exempt groundwater produced for agricultural purposes in the PGMA area incorporated into the District. Mark Howard seconded the motion and the motion failed with Harold Grall, Danny Krienke, Gene Born and Justin Crownover opposing the motion.

Danny Krienke moved to set production fees for Groundwater Production Year 2016 at \$1.00 per acre foot on non-exempt groundwater produced for agricultural purposes and \$5.00 per acre foot on all other non-exempt properties. Gene Born seconded the motion and the motion passed by a majority vote of 4-2 with Zac Yoder and Mark Howard opposing the motion.

Agenda 3b - Consider action regarding Mr. Franz Schmitt, owner of FJ Farms, request for a sixty (60)-day extension for the following Well Permits for proposed Wells to be located in Dallam County, Texas:

DA-9481 9/23/16, DA-9482 9/18/16, DA-9483 9/23/16, DA-9489 9/18/19, DA-9490 9/23/16, DA-9491 9/19/16, DA-9492 9/19/16 and DA-9493 9/23/16.

On August 22, 2016, Mr. Franz Schmitt of FJ Farms requested an exception to District Rule 2.3.1 which states:

Duration of a Well Permit:

1. A Well Permit is valid for one hundred-fifty (150) calendar days after the date the permit application is approved by the General Manager. The Board, for good cause, may extend the duration of the Well Permit. To be considered by the Board, an application for an extension must be filed with the District before the expiration of the Well Permit.

Mr. Schmitt submitted his request prior to the expiration of the well permits as required by District Rule 2.3.1. Mr. Schmitt is requesting a sixty (60)-day extension to the following well permits as noted by his request presented to the Board:

DA-9481	Section 19, 6, CSS	809 yds South 658 yds West	expiring 9/23/16
DA-9482	Section 22, 6, CSS	796 yds South 193 yds East	expiring 9/18/16
DA-9483	Section 22, 6, CSS	314 yds North 844 yds West	expiring 9/23/16
DA-9489	Section 1, 7, CSS	444 yds North 478 yds East	expiring 9/18/16
DA-9490	Section 1, 7, CSS	202 yds South 592 yds East	expiring 9/23/16
DA-9491	Section 2, 7, CSS	189 yds South 135 yds East	expiring 9/19/16
DA-9492	Section 43, 6, CSS	498 yds North 428 yds West	expiring 9/19/16
DA-9493	Section 41, 6, CSS	441 yds North 689 yds East	expiring 9/23/16

On August 31, 2016, pursuant to District Rule 11.2.3 D(1) and (2), the District via United States Postal Service, notified the applicant and known interested persons whose rights may be affected, including adjacent landowners, of the exception requested. Written comments were required to be received no later than 5:00 p.m. on September 12, 2016.

Copies of the permits and corresponding maps showing the locations of the wells and the surrounding known interested persons were presented to the Board.

The General Manager recommended that the Board consider the effect of the extension of the well permits on adjacent well owners or land owners that may wish to select a location that would compete with Mr. Schmitt's currently permitted well locations. A measure of the effect on adjacent property owners is whether or not the other owners objected to the extension. The General Manager requested that the permit extensions,

if granted, apply only to the construction period and not be applicable to the time period for equipping the rest of the wells within the GPU. Further, the General Manager requested that the District's costs for the administration of the exception, if granted, be charged to the requestor.

Justin Crownover moved to grant the 60-day extension of the well permits listed above to apply only to the construction period of the wells. Mark Howard seconded the motion. Vice-President Grall called for a roll-call vote:

Danny Krienke	No
Mark Howard	Yes
Zac Yoder	Yes
Justin Crownover	Yes
Harold Grall	No
Gene Born	No

The motion failed.

Vice-President Grall moved to extend the well permits listed above to apply only to the construction period of the wells for a 30-day period to permit this matter to be considered by the full Board of the District. Zac Yoder seconded the motion and it passed by a vote of 4-2 with Gene Born and Danny Krienke opposing the motion.

The Board recessed at 11:17 a.m. and reconvened at 11:23 a.m.

Agenda 3e - Consider the proposed compiled summary of the hearing, relevant comments received during the comment period, any suggested revisions to the proposed desired future conditions, and the basis for the revisions to be submitted at the next GMA-1 Joint Planning Meeting.

On April 20, 2016, the Groundwater Management Area 1 (GMA 1) unanimously voted to adopt Proposed Desired Future Conditions (DFCs) for the major aquifers in the Joint Planning Area. All documents considered in the process of proposing the DFCs were organized and posted at <http://www.panhandlewater.org/15/GMAProposedDocuments.html> for the convenience of the general public and GMA 1 membership. Individual districts of GMA 1 moved forward with public hearings during the statutorily required 90-day public comment period prior to the final consideration of DFCs by GMA 1.

On May 9, 2016, the proposed DFCs were mailed to the districts starting the 90-day public comment period that began May 13, 2016 and ended on August 15, 2016. The proposed DFCs relevant to the District are as follows:

1. Ogallala Aquifer and Rita Blanca Aquifer DFCs:
 - A. Management Zone 1: Dallam, Hartley, Sherman and Moore Counties – At least 40% of the volume in storage remaining in 50 Years for the period 2012 - 2062;
 - B. Management Zone 2: Hansford, Hutchison, Ochiltree and Lipscomb Counties – At least 50% of the volume in storage remaining in 50 Years for the period 2012 - 2062; and
2. Dockum Aquifer DFCs – At least 40% of the available drawdown remaining in 50 Years for the period 2012 - 2062 for Dallam, Hartley, Moore and Sherman Counties, Texas. No more than 30 feet average decline in water levels for the period 2012-2062 in 50 years for Hutchinson County.

The District made available in its office, and through the District's website, a copy of the proposed DFCs and any supporting materials, such as the documentation of factors considered under TWC Section 36.108(d) and groundwater availability model run results. The District initially posted notice regarding the public comment period in the *Amarillo Globe-News* on May 21, 2016 notifying the public of the comment period.

The District's Board selected a hearing date for July 19, 2016 and the District published notice of the hearing in the *Amarillo Globe-News* on June 19, 2016 and June 26, 2016 in accordance with TWC Section 36.063 and the District's Rules. The notice of the public hearing was also posted on the District's website. Copies of all notices were presented to the Board.

The District held a public hearing regarding the District's intent to adopt proposed DFCs on July 19, 2016 at 9:00 a.m. at the Richard S. Bowers Water Conservation Learning Center, 6045 County Road E, Etter, Texas. The District's general manager provided a PowerPoint presentation at the hearing regarding the DFC process and procedures. The District had the hearing recorded by a court reporter. A copy of the PowerPoint presentation and the Court Reporter's transcript were presented to the Board.

The District received no relevant comments from the public during the hearing. No written comments, questions, or requests for additional information concerning the adoption of the proposed DFCs were submitted to the District by the close of the comment period on August 15, 2016.

Though no relevant comments were received by the District regarding the proposed DFCs, the District had one suggested revision to the proposed DFCs and one recommendation regarding the joint planning process.

The District's suggested revision is as follows:

Dockum Aquifer DFCs – clarify that the Dockum aquifer does not exist in Hutchison County within the District the reference to Hutchison County in the Dockum DFC. Thus, any referenced to a proposed Dockum DFC in Hutchinson County should be deleted.

The District's recommendation is as follows:

For the purposes of joint planning, the District recommends that the districts of GMA 1 support amending Chapter 36 of the TWC to require the districts to review DFCs every five years, but to require the DFC adoption procedures only if there is a proposed change in the DFCs.

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and, if the districts determine that a change in desired future conditions is warranted, shall propose for adoption the new desired future conditions for the relevant aquifers within the management area.

Gene Born moved to adopt the DFC Summary Report presented to the Board. Justin Crownover seconded the motion and it was unanimously approved by the Board.

Agenda 3f - Consider contract with Leon New, P.E., related to the District's Agriculture Water Conservation Programs.

In May, the Texas Water Development Board notified the District that the TWDB needed a new contract with Leon New to continue to reimburse the District for a portion of New's costs related to the 3-4-5 Demonstration Project. The change primarily would indemnify the TWDB from damages caused by New as an independent contractor. The new contract provides that the District will advance funds for the costs

of New's professional liability insurance to permit New to protect himself from actions by District personnel that could cause harm to New, and increases New's compensation for the demonstration project to \$65.00 per hour. A proposed new contract with New was presented to the Board at the meeting.

Danny Krienke moved to approve the new contract between the District and New. Justin Crownover seconded the motion and it was unanimously approved by the Board.

Agenda 3g - Receive report regarding the District's agriculture conservation programs.

The General Manager reported as follows:

Master Irrigator Program

The Project Advisory Committee met on August 2nd to review and begin planning the next Master Irrigator sessions. The proposed dates for the upcoming Master Irrigator. 2017 Session Dates are:

Session 1: Irrigation Scheduling March 22, 2017

Session 2: Agronomics March 29, 2017

Session 3: Systems April 5, 2017

Session 4: Systems & Special Topics April 12, 2017

Master Irrigator Project Advisory Committee

Danny Krienke, North Plains Groundwater Conservation District; Leon New, Irrigation Engineer; Steve Amosson, Texas A&M AgriLife; Charles Hillyer, Texas A&M AgriLife; Scott Strawn, Texas A&M AgriLife; Shawn Carter, Crop Production Services; Cameron Turner, Texas Water Development Board; Keith Sides, USDA NRCS; David Reinart, Better Harvest; Stan Spain, Spain Farms; Bryce Howard, Farmer.

3-4-5 Demonstration Project

AquaSpy has installed all soil moisture probes and all are fully functional. This year's project will consist of five producers. The sites include 5 LEPA fields, 1 subsurface drip field, LEPA vs PMDI field and a PMDI field. All of the corn is around dough and dent with the exception of one field that is in late starch.

3-4-5 Field Days

Two field tours were held in Perryton and Dalhart on August 31st and September 1st. Approximately 30 producers attended the meetings. Leon New, Zac Yoder and Danny Krienke discussed this year's 3-4-5 Project. David Reinart discuss the nitrogen program for the 3-4-5 Project.

Dates

August 31, 2016: Perryton, TX

September 1, 2016: Dalhart, TX

Water Conservation Center

All equipment is in working condition. Tex-Zac began working on installing some electrical outlets and lights for the drip filter station on September 9th.