

UPPER TRINITY GROUNDWATER CONSERVATION DISTRICT

MONDAY, JUNE 20, 2016

MINUTES OF MEETINGS OF THE BOARD OF DIRECTORS

INTRODUCTORY MATTERS

1. Welcome guests and members of the public. The Public Hearing convened at 5:01 p.m.
 2. Roll call; establish a quorum; call Public Hearing to order; declare it open to the public.
Directors Present: Dan Caudle, Mike Berkley, Tracy Mesler, Mike Massey (arrived at 5:24 pm), Don Majka, and Tim Watts
Directors Absent: Richard English and Billy Stout
 3. Pledges of allegiance to the flags.
-

PUBLIC HEARING ON PROPOSED DESIRED FUTURE CONDITIONS

1. General Manager Doug Shaw, Attorney Brian Sledge, and Hydrogeologist Wade Oliver provided an update on the DFC development process and the roll of the DFCs in the District's management of groundwater resources. The floor was then opened to receive comments from the public regarding proposed Desired Future Conditions ("DFCs") for the Trinity Aquifer in Hood, Montague, Parker, and Wise Counties, Texas in accordance with Section 36.108(d-2) of the Texas Water Code.
 - Pat Guedry, Bowie, Texas, asked what would happen if the water level in the aquifer begins to decline at a rate that would, over an extended period, lead to surpassing the DFC. It was his understanding that the DFCs would allow the District to restrict drilling and the amount of water withdrawn from the aquifer. He also asked if the District looks at the DFCs on a pro-rated basis, for example if the DFC for the Antlers is no more than 30 feet of drawdown by 2070, does that mean no more than approximately 6 inches of drawdown per year?
 - GM Shaw explained that the DFCs do not in and of themselves give the District the authority to make cutbacks, the District already has that authority as granted by Chapter 36 of the Water Code and the District's enabling legislation. He also stated that DFCs can be exceeded temporarily over time frame.
 - Wade Oliver of Intera explained it is the District's responsibility to watch the water level trend over years and make sure we "stay on track" with meeting the Desired Future Condition. It does not mean that if water levels fall below some sort of linear pro-rated amount of the DFC in any given year they have to institute mandatory cut-backs.
 - Brian Sledge of Sledge Law said the District has the authority to limit pumping, so long as they follow Chapter 36 regulations.
 - Jeffrey Nunneley, Denton, Texas, asked if the proposed 50-year plan allows the District to exceed its individual DFCs so long as the entire Groundwater Management Area 8 (GMA-8) achieves its DFCs. Mr. Nunneley stated that he feels it is not reasonable to use averages for DFCs when our portion of the aquifer is much thinner than the average of the Trinity Aquifer as a whole.

- GM Shaw explained that each groundwater conservation district is responsible for its own DFCs and manage the pumping within its jurisdiction. Upper Trinity GCD will manage its DFCs on a county basis, not based on the GMA 8 wide averages. GM Shaw also noted that the District will be monitoring DFCs in both the outcrop and subcrop.
 - Robert McKee, Saint Jo, Texas, gave an example of residents in Boyd selling so much water to an oil and gas company that their neighbors ran out of water. It appears that the DFCs are averaged across an entire county, what do you do when you have an area of a particular county where water levels are dropping dramatically and levels in the rest of the county are remaining constant? Do desired future conditions supersede the landowner's right to produce groundwater under their property?
 - Mr. Sledge explained that permanent rules will soon be put into place that will prevent that from happening. In theory large well or well fields that would cause the scenario described would have to come before the Board of Directors to receive a permit, the District will hold public hearings which will give concerned citizens the opportunity to make any case for why a permit should or should not be issued. The District will have to balance a number of things if and when it decides to issue use permits and one of those considerations will be impacts on other wells in the area and the ability to achieve DFCs. In regards to the private property issue, what the Texas Supreme Court clarified a few years ago in the Day case is that the landowner owns the groundwater in place under their property. They also clarified that their ability to pump that water is subject to reasonable regulation from a GCD because it is a common pool. However we could be subject to a takings claim, which if lost the District would have to pay for any cutbacks, but those cutbacks would likely be upheld.
 - Terry Fender, Saint Jo, Texas, asked how the DFCs take into consideration population growth if the MAG remains constant over the 50 year time period.
 - GM Shaw assured him that UTGCD and other districts have considered population growth when determining the DFCs. This is done through the Regional Water Planning process as well as the baseline increase of 30% in GAM run 10.
 - Pat Guedry, Bowie, Texas, asked what UTGCD does about groundwater being exported out of the District?
 - Mr. Sledge responded that the wells in the District do not produce enough water to make it lucrative to sell water to other counties.
2. After all comments were heard, the Public Hearing concluded at 6:13 pm.

REGULAR BOARD MEETING

The Board may discuss, consider, and take appropriate action, including expenditure of funds as necessary or appropriate, on any item listed on this agenda:

1. Welcome guests and members of the public. . The Regular Board Meeting convened at 6:13 p.m.
2. Roll was called and a quorum was established during Introductory Matters.
3. Public comment was made during the Public Hearing.
4. Director Majka moved to approve the consent agenda, including minutes from Board meeting on April 18, 2016; cancellation of Regular Meeting on May 16, 2016; minutes from Public Hearing on May 16, 2016; bank statement ending March 31, 2016; bank statement ending April 29, 2016, and financial reports of the District; bank statement ending May 31, 2016, and current financial reports of the District; ratify payment of bills/invoices received through May 16, 2016; approve payment of bills/invoices received through June 20, 2016; ratify bills paid through June 20, 2016; reimburse staff for invoices/bills paid on behalf of the District through June 20, 2016. Director Berkley seconded the motion. The motion passed unanimously.
5. No items were pulled from the consent agenda for further discussion.

President Mesler called for a brief recess at 6:16 p.m. The board reconvened at 6:25 p.m.

6. A presentation by INTERA Inc. regarding Draft results from spacing study for the Trinity and Paleozoic Aquifers will be made at the next Regular Board Meeting.
7. Brian Sledge, the District's legal counsel, briefed the Board on pertinent legal issues and developments impacting the District since the last regular Board meeting, and legal counsel's activities on behalf of the District, including: groundwater-related legislative activities; joint planning and desired future conditions development activities; developments in groundwater case law and submission of legal briefs; and policy and personnel issues of the District. No action was taken.
8. **Management Report on Administrative and Operational Issues:** The General Manager and staff will brief the Board on the following and any other items included in the General Manager's written report, which may be discussed, considered, and acted upon by the Board, including authorizing the initiation of, managing, or resolving enforcement action or litigation where applicable.

A. General Manager's report

- Staff mailed letters to three well owners who removed meters from non-exempt wells.
 - GM Shaw is investigating potential waste of groundwater at Covered Bridge Canyon.
 - The board's consensus is that Parker County should not remove the requirement for Groundwater Availability Certification (GAC) studies from their rules. Regardless of the study's outcome, new well applicants must comply with District rules.
- 1) Director Massey moved to find Central Texas Water Well and Ni America in violation of Rule 3.5(a) for drilling a replacement water well without approval. Because the new well has a reported 30 horsepower pump, and the original well had a reported 7.5 horsepower pump, the Board of Directors found that the new well should not be treated as a "replacement well". The motion offered both parties a choice of one of the following settlements:
 - a) treat the new well as a "replacement well" under District Rules by re-equipping the new well so that its maximum design production capacity be no greater than the original well being replaced along with payment of a \$250 penalty by Central Texas Water Well. Ni America must pay a \$250 penalty, and submit a New Well application with a \$175 application fee and a \$100 (non-refundable) deposit; or
 - b) seek an exception to the District's well-spacing rules by treating the new well as a "new well" under the District Rules which would require notice and hearing as outlined in section 4.5 of District Rules. Should the parties choose this option, the hearing will be held in conjunction with the District's regular board meeting on August 15, 2016. If this is the option the parties wish to pursue, the offer also includes a payment of a \$250 penalty by Central Texas Water Well. Plus, Ni America must pay a \$250 penalty, and submit a New Well application with a \$175 application fee, a \$100 (non-refundable) deposit and a \$50 exception fee.

If the parties choose to pursue option 1, the motion stated that the original water well being replaced (Registration ID 964) must be plugged in accordance with state plugging standards within 30 days of acceptance of the settlement offer. If the parties disagree with these settlement offers, or if both parties fail to respond, a Show Cause hearing will be scheduled in conjunction with August 15, 2016 Board meeting. Director Berkley seconded the motion. The motion passed unanimously.

- 2) Director Watts signed a Conflict Disclosure Affidavit Form and abstained from discussion regarding a potential violation of District Rules by Toby Watts of Watts Drilling Co. Director Massey moved to find Toby Watts of Watts Drilling Co committed a first major violation of District Rule 3.5 (a) for drilling a replacement water well without approval; he assessed a penalty


of \$250 and required Mr. Toby Watts to plug the original well. Director Caudle seconded the motion. Director Watts abstained from voting. The motion carried.

- 3) The Board consensus was staff should approve the new well application from Aqua Texas as a replacement well. They may either plug the original well, or keep it open for water level monitoring.
 - 4) Director Massey moved that the general manager may, at his discretion, bring new well applications submitted on properties that were platted prior to 2009, but do not meet minimum tract size and have water available from a public water system to the Board for approval or denial. Director Majka seconded the motion. The motion passed unanimously.
 - 1) Staff will continue to search for real estate for a new office site.
 - B. Report on delinquent customers of the District; no action was taken.
 - C. During his update on the Investment report, GM Shaw mentioned that he would withdraw the interest from those certificates of deposit whose balances currently exceed the FDIC insurance amount and deposit that amount in the District's checking account. In the next Regular Board Meeting, he will recommend additional interest-bearing depositories to the Board.
 - D. Public Information Act Requests
 - E. Report on injection well applications filed with the Railroad Commission
 - F. Well Registration and Groundwater Production reports
 - G. Director Massey moved to authorize GM Shaw to accept the project estimate from Pulse Design, Inc., for a native plant display in the District's Educational Trailer in an amount not to exceed \$1,500. Director Caudle seconded the motion. The motion carried unanimously.
9. Director Majka moved to authorize the General Manager to sign the necessary documents to renew the staff's supplemental insurance with Principal Life Insurance Company. Director Massey seconded the motion. The motion carried unanimously.
 10. No budget amendments were necessary.
 11. The next Regular Board meeting will be Monday, July 18, 2016, in the Springtown office at 5:00 p.m.
 12. In addition to topics already mentioned, GM Shaw added financial audit of Fiscal Year Ending 2015 to be placed on the next meeting agenda.
 13. President Mesler adjourned the meeting at 8:09 p.m.

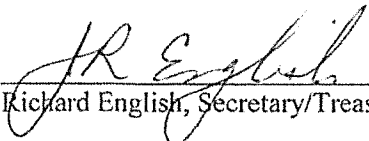
PASSED, APPROVED, AND ADOPTED BY THE BOARD OF DIRECTORS this

18 day of July, 2016.

Attest:



Tracy Mesler, President



Richard English, Secretary/Treasurer