

# BLUEBONNET GROUNDWATER CONSERVATION DISTRICT

Board of Directors Meeting

Wednesday, April 17, 2013

6:00 PM

Bluebonnet Groundwater Conservation District

Board Room, Suite B & C

303 East Washington Avenue

Navasota, Texas

## Minutes of the Meeting

In attendance: Directors Beckendorff, Brandes, Davis, Groschke, Huebner, Minze, Morrison, Patout, Thomas, and Vaughn; General Manager Holland, Administrative Assistant Paben, and Permitting Assistant Abney; District General Counsel Dugat and District Hydrogeologist Consultant Dr. Hutchison; Visitors Buddy Kienig, Tom Sherman, Bill Hodges, Millie Fields, Edmond McCarthy, James Timmerman, Vincent M. Morales Jr., Benny Waleczyk, John Maresh, Jack Hamlett, Charles A. Kalkomey, Matt Breazeale, Chris Coffman, Kim and John Couch, Tim Throckmorton, Bart Fletcher, Clayton Chambers, Reese Turner, Deborah Deterring, Mary Chandler, Edgar S. Marston III, Jan A. Chandler, J.D. Head, Sarah Faust, Drew Miller, John Nelson, Michael Serymow, Edward J. Zapalac, Judy Zapalac, Sharon Wollingford, Diane Eismont, Jack Eismont, Terri Vela, Bill Whitworth, Tim Lapham, Rick Welch, Tom Paben, Michelle M. Minns, Jennifer Ruby, and Melinda Silva. Directors Blezinger and Reed joined the meeting at 6:07 PM.

### 1. Call to order

The meeting was called to order by President Patout at 6:05 PM.

### 2. Public Comment

(Public comment is limited to a maximum of 3 minutes per speaker and/or 30 minutes total time for all speakers)

John Couch representing Gloster Aerodome and speaking on behalf of Bryant Chapman expressed that they feel the required Phase I Hydrogeological Report is inadequate and full of assumptions.

Drew Miller representing North Fort Bend Water Authority wanted to introduce himself to the Board and to point out that the area is growing, studies show significant subsidence, and that this project would be economically detrimental to his client.

Tim Lapham representing Austin County Farm Bureau addressed issues of how the future availability will be impacted and suggested working with the Fort Bend Subsidence District to achieve control of subsidence.

Chris Coffman representing City of Sealy expressed opposition of the application on behalf of the City of Sealy and has concerns with the cone of depression. At the end of his comments, he passed a copy of the City of Sealy's Resolution No. 2013-07 to GM Holland.

J.D. Head representing Marston, Deterring, and Chandler introduced himself as representing three landowners and is concerned that there aren't production limit rules in place.

Bill Hodges representing Austin County Ranchers referred to the 1967 study Report 68 created by the Texas Water Development Board, cone of depression concerns, impact of wells creating drawdown and subsidence.

Tom Sherman representing CAWCC continued to reference Report 68 by TWDB and believes that there is no reason to expect water in wells if the application is approved.

Michelle Minns representing Brookshire Dome commented about the impact on three feet flood plains, salt dome and how it will affect wells.

3. Discussion and possible action relating to non-exempt Well Development, Operating, Aggregation and Transportation Applications of Electro Purification LLC ("Electro Purification Applications") for seven proposed Waller County wells generally located near 36604 Fort Bend County Line Rd., Brookshire, Texas 77423 and three proposed Austin County wells generally located at 6135 Coody Lane, Sealy, Texas 77476, which are estimated to produce an aggregated maximum amount of twenty million gallons per day (approximately 22,500 acre-feet per annum) of which 10 million gallons per day for transport and use by the cities of Richmond and Rosenberg in Fort Bend County and the remaining ten million gallons per day for municipal and industrial purposes within or transported outside the District. The Board will consider the following:

- a) Timeline associated with processing of applications;  
GM Holland presented an overview of the timeline with backup material. The timeline reflects that GM Holland declared the Applications administratively complete as of March 6, 2013. This means all of the required information from our District Rules or at the request of the District has been submitted. We now transition into the review of the application and all of its parts and contested hearing.
- b) Written comments and requests for contested case hearing;  
GM Holland addressed the amount of comments and hearing requests. March 6, 2013 was the deadline for hearing requests and comments. The District received 38 requests for contested case hearings and 203 comment letters. Both the hearing requests and comment letters have been posted on the District's website for review.
- c) General Manager's determination to conduct a contested case hearing;  
Under District Rules, the General Manager may schedule a contested hearing if, among other things, he determines that it will be beneficial to the District's consideration of the Application. GM Holland formally declared today that the District will set the Electro Purification Applications for a contested hearing.
- d) Requests that contested case hearing be conducted by and referral to the State Office of Administrative Hearings;  
GM informed the Board that eight persons requested a SOAH hearing. Under Chapter 36 of the Water Code and the District rules, a party requesting a contested case hearing, or the Applicant, have an absolute right for the contested case hearing to be conducted by SOAH. The condition to having SOAH conduct the hearing is that the requester must pay SOAH's cost of conducting the hearing. We checked with the General Counsel of SOAH who estimated that costs associated with a SOAH proceeding is \$44,000. This includes a preliminary hearing, pre-hearing conferences, a seven day hearing on the merits, preparing the written proposal for decision for the Board, appearing before the Board, and travel and lodging. Because GM Holland was concerned that some of the eight persons requesting a SOAH hearing did not understand the cost obligations, he wrote to each explaining the cost element and asking them to respond with a letter that they still wanted a SOAH hearing. He indicated that, if they did not respond by April 10, 2013, he would treat it as a request for a contested case hearing, but not one conducted by SOAH. Of the eight letters sent out, three responses were received. Two were to request a contested case hearing but not conducted by SOAH. One expressed their desire that the State Office of Administrative Hearings conduct a contested case hearing in connection with the Applications of Electro Purification and that they are responsible for all or a portion of the cost estimated at \$44,000, which must be deposited with the District before proceeding with the SOAH hearing. This respondent was the

North Fort Bend Water Authority. Because there are still requests for a SOAH hearing by person(s) who have agreed to pay, the hearing will be conducted by SOAH. Director Minze addressed the SOAH requirements and being mandated in the last legislative session. General Counsel Dugat explained that the Board does not have any discretion if a party requests and pays for SOAH.

- e) Deposit for and approval of contract with the State Office of Administrative Hearings to conduct hearings;

GM Holland called on the Board to approve the contract with the State Office of Administrative Hearings to conduct hearings. GM Holland will not send the contract to SOAH until the District has received the \$44,000 deposit from North Fort Bend Water Authority. GM Holland stated that the contract begins today since today is the formal declaration of going to the hearing and runs through August 31, 2013. The contract can be revisited if the hearing is not completed by then. Director Morrison moved that the Board approve the contract with the State Office of Administrative Hearings to conduct hearings. Director Thomas seconded. ***Motion carried.***

- f) Set the date, time, and location of the preliminary hearing to be held prior to hearings conducted by the State Office of Administrative Hearings;
- g) Designation of presiding officer for, who will conduct the preliminary hearing, and introduction of Mr. John Vay as the Board's special counsel for the hearing procedures;
- h) Determine whether party status will be designated at the preliminary hearing or at hearings conducted by the State Office of Administrative Hearings; and

GM Holland introduced f,g, and h together and explained that under the Water Code, the Board must initiate a hearing within 35 days of the determination that a hearing will be held. The deadline to conduct the initial hearing is Wednesday, May 22, 2013. As a practical matter because of notice and scheduling conflict, probably need to focus on May 6-May 22. This initial hearing can be conducted a number of ways. It can be:

1. Conducted by SOAH;
2. Conducted by a quorum of the Board with the Board President acting as the Presiding Officer; or
3. Conducted by an individual the Board has delegated in writing the responsibility to preside over the hearing.

The preliminary hearing can be used to accomplish three things:

1. Take public comment;
2. Determine who will be a "party" to the hearings, which requires testimony; and
3. Set a schedule for the hearing on the merits.

If the Board decides to conduct the preliminary hearing, we can also present a brief overview of the Applications by the General Manager and the Applicant. The preliminary hearing (and all of the hearing) can be held anywhere in the District or, in Austin, if held by SOAH. The preliminary hearing should be in a venue larger than the District office and could be in Waller and/or Austin counties. GM Holland has determined that Austin Co. Fairgrounds, New Ulm Fireman's Hall, Knights of Columbus Hall (at cost) is available for a hearing. He also informed the Board that the Executive Committee approved hiring Mr. John Vay as Special Counsel to the Board. If the Board conducts the preliminary hearing, Mr. Vay will guide the Board through the process, while District General Counsel, Mr. Bill Dugat, assists the General Manager. GM Holland recommended 1) the Board conduct the preliminary hearing and designate the Board President as the presiding officer; 2) the Board not determine party status 3) the hearing to be

held within the district at the Austin County Fairgrounds in Bellville; and 4) held on May 16<sup>th</sup> to begin at 10AM. Director Minze addressed General Counsel Dugat regarding the process of the contested case. Director Morrison asked if the \$44,000 SOAH is estimating includes having SOAH determine party status. General Counsel Dugat confirmed that it is included and then explained formal process including the hearing on the merits, taking evidence and the administrative law judge giving a written report to the Board. The directors discussed possible dates they are available for the preliminary hearing because a quorum of the Board must be present. Director Brandes moved that the Board hold the preliminary hearing on May 20, 2013 at 10 AM at the Austin County Fairgrounds in Bellville. Director Minze seconded. **Motion carried.** Director Minze moved that the Board conduct the preliminary hearing and designate the Board President as the presiding officer. Director Thomas seconded. **Motion carried.** Director Beckendorff moved that the Board not determine party status. Director Morrison seconded. **Motion carried.** Director Morrison moved that the Board hold the preliminary meeting at the Austin County Fairgrounds or within the District if the fairgrounds are unavailable. Director Davis seconded. **Motion carried.**

- i) Matters to be included in the referral to the State Office of Administrative hearings, including hearing location and cost allocations.

The District will need to send a letter to SOAH, along with the contract, with any specific directions. For example, if we want the hearing to be held somewhere other than Austin, we will need to direct the location of the hearing. The \$44,000 hearing cost estimate includes expenses for SOAH to conduct a hearing in the District. The locations which have been identified as possibilities for SOAH to conduct the hearing are the Leidertafel, Hill Center, American Legion Hall, Knights of Columbus Hall, Sealy ISD Auditorium, Pattison Fire Station, and Royal High School Auditorium. If there are multiple requests for a SOAH hearing such that the \$44,000 SOAH cost can be divided, then we need to ask SOAH to allocate the costs. General Counsel Dugat stated that the applicant has five days from today to request a SOAH hearing as well and if a SOAH hearing is requested by the applicant the District would ask the administrative law judge to portion those costs. Director Blezinger moved that the Board have the hearing in a suitable location within Austin or Waller County. Director Morrison seconded. **Motion carried.**

4. Public Hearing on proposed rules to commence at 6:30PM – Proposed revisions to the District rules that establish provisions from past legislative changes to Chapter 36 Texas Water Code. A copy of the proposed rules is available for review at the District Office at the address described above and on the District's webpage at [www.bluebonnetgroundwater.org](http://www.bluebonnetgroundwater.org).

At 7:15 PM, the Bluebonnet Groundwater Conservation District Board of Directors stood in recess of the regular Board meeting and conducted a public hearing on the proposed District Rules revisions to current statute in Chapter 36. After hearing no comments regarding the District Rules revisions, at 7:16 PM, President Patout declared the public hearing closed and re opened the regular Board meeting of the Bluebonnet Groundwater Conservation District.

5. Discussion and possible action to approve minutes of January 16, 2013 Board Meeting and February 6, 2013 Special Board Meeting.

Upon review, Director Minze moved to approve minutes of January 16, 2013 Board Meeting and February 6, 2013 Special Board Meeting. Director Beckendorff seconded. **Motion carried.**

6. Discussion and possible action to approve quarterly Financial Report.  
GM Holland explained the increase in engineering and legal fees. After reviewing the report, Director Brandes moved that the Board approve the quarterly Financial Report. Director Reed seconded. **Motion carried.**
7. Discussion and possible action to approve quarterly Investment Report.  
After a brief review, Director Brandes moved that the Board approve the quarterly Investment Report. Director Thomas seconded. **Motion carried.**
8. Discussion and possible action to accept quarterly Drought Status Assessment.  
GM Holland discussed the changes that have occurred in the last three months. Director Morrison moved that the Board accept the Drought Status Assessment. Director Davis seconded. Director Minze asked GM Holland to expand on the drought affect on the water tables within the District. GM Holland explained in detail about the state of the aquifers as well as the difference between climate drought and water/aquifer drought. The District's determination for a drought is based on aquifer conditions. Monitoring is in place to assure that the aquifers are stable and even in 2011, the water tables haven't declined. As bad as 2011 was, a vast majority of public water supplies in our area never instigated their own drought contingency plans as required by the TCEQ, they only instigated voluntary restrictions. **Motion carried.**
9. Discussion and possible action to approve the revised District Rules and readopt the District Rules.  
GM Holland explained the importance of revising the District Rules to get them in line with statute. Director Thomas moved that the Board approve the revised District Rules and readopt the District Rules. Director Davis seconded. Director Morrison expressed desire to apply Rule 8.17 to rig supply wells. General Counsel Dugat stated that the rule mentioned is applicable to those wells. **Motion carried.**
10. General Manager's Report
  - a. Well Registration/Permitting
  - b. TAGD
  - c. Region G & H RWPG
  - d. Legislative Summary
  - e. Vehicle Summary
11. Date for next regular Board meeting – July 17, 2013
12. Adjourn  
There being no further business, Director Brandes moved that the Board adjourn the meeting. Director Beckendorff seconded. The meeting adjourned at 7:49 PM.

The above minutes of the regular meeting of the Board of Directors of the Bluebonnet Groundwater Conservation District held on April 17, 2013, were approved and adopted by that Board on July 17, 2013.

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J Jared Patout, President

ATTEST:

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James Morrison, Secretary