

UPPER GULF COAST AQUIFER PLANNING AREA (GMA 14)

Joint Planning Group Meeting

Tuesday, September 23, 2014
1:30 PM

MEETING MINUTES

A regular meeting of GMA 14 was held Tuesday, September 23, 2014, at 1:30 PM, in the board room of the Lone Star Groundwater Conservation District located at 655 Conroe Park North Drive, Conroe, Texas.

The meeting was called to order by Kathy Turner Jones (Lone Star GCD) at 1:30 PM with a roll call of District representatives and Interlocal Agreement Participants. Districts represented included: Brazoria County GCD (joining at 2:15 PM), Bluebonnet GCD, Lone Star GCD, Lower Trinity GCD and Southeast Texas GCD. Interlocal Agreement Participants included: The Honorable John Brieden, Washington County Judge; and Mike Turco, Harris-Galveston Subsidence District & Fort Bend Subsidence District. Also in attendance at the meeting were: Texas Water Development Board Member Bech Bruun, Jason Afinowicz, Freese and Nichols, Inc.; Larry French, Texas Water Development Board (TWDB); Bill Mullican, Mullican and Associates; and members of the public. (*see Attachment "A" for a list of attendees*).

With no registered public comment, Ms. Jones proceeded with receipt and requests of posted notices from the group. Ms. Jones then asked for consideration of the approval of the minutes from the GMA 14 meeting on June 24, 2014. After discussion and upon a motion by Mr. Martin, seconded by Mr. Jacobs the minutes for the June 24, 2014 meeting were approved unanimously.

Meeting convened as a meeting of the GMA 14 Joint Planning Interlocal Agreement Participants.

The GMA 14 Joint Planning Interlocal Agreement Participants meeting was called to order at 1:42 PM

Ms. Jones began this portion of the meeting by continuing discussions of the nine factors set forth in Texas Water Code Section 36.108, Subsection (d), each of which must be considered by the member districts before voting on the proposed DFCs for the aquifers in GMA 14. In previous meetings, we considered factors (1) through (5) listed in the statute, including aquifer uses or conditions within the management area, water supply needs and management strategies provided in the state water plan, hydrological conditions such as the total estimated recoverable storage, average annual recharge, inflows, and discharge for each aquifer, other environmental impacts, and subsidence. Today we will consider factors (6) and (7) regarding socioeconomic impacts and impacts on property rights.

Ms. Jones called for the briefing and discussion of the socioeconomic impacts reasonably expected to occur as a result of the DFCs, as required by Texas Water Code Section 36.108(d)(6). Mr. Mullican had prepared a presentation brief to the group on this issue (*see Attachment "B" for slides*). After an in depth history of socioeconomic impact analysis and its origins in State water planning, Mr. Mullican read into the record from a qualitative perspective, both positive and negative socioeconomic impacts he found to potentially result from implementation of proposed DFCs:

- Proposed DFCs may require conversion to alternative supply, which may have increased costs associated to infrastructure, operation, and maintenance;
- Proposed DFCs may reduce/eliminate the costs of lowering pumps and either drilling or deepening wells;
- Proposed DFCs may reduce/eliminate the costs associated with subsidence (including legal costs assigned to parties determined to be liable);
- Proposed DFCs may serve to sustain/enhance economic growth due to assurances provided by diversified water portfolio;
- Alternatives to proposed DFCs may result in short-term reduction in utility rates due to reduction in cost of water management strategy implementation; and
- Alternatives to proposed DFCs may result in significant but unquantified production costs due to transition from confined to unconfined conditions in local aquifers.

Mr. Mullican then requested each GMA Representative and Interlocal Participant to answer to and speak on these considerations in relation to their individual representative area.

Mr. Turco began the discussion reflecting on how this list affects the subsidence districts with subsidence being a big issue for the area. For the purpose of this consideration, the qualitative approach is beneficial. There are lots of costs associated with conversion from source to source that are certainly socioeconomic impacts from their regulatory plan perspective and the DFCs proposed by this group. Mr. Turco did suggest the addition of potential economic impact from base flow loss to estuaries, which needs more thought. Overall, it is a complete list surmising the impact from a well-rounded view.

Mr. Holland agreed with the overall general qualitative approach being applicable not only from an individual district perspective, but for the area at large. The specific item which stood out in his mind was the proposed DFCs reduction or elimination of costs to lower pumps and either drilling or deepening wells. With older wells, 40 plus years old, completed much shallower, generally less than 150 feet total depth, these wells need to be deepened into more saturated sands for quality and sustainability of the well regardless of the DFC to protect from the shallow fluctuations over time, placing these wells in a more confined than unconfined system. Though there will certainly be varied socioeconomic impacts across the area from a reduction or elimination of these costs, there may be some inherent increases as the standards and depths of new or replacement wells have changed over time.

Ms. Jones gave a statement into the record for use and documentation into the explanatory report regarding Lone Star GCD's approach and consideration of socioeconomic impacts reasonably expected to occur (*see Attachment "C" for Lone Star GCD*).

Mr. Burkett noted that he had nothing to add after the formed statements from Ms. Jones.

Mr. Jacobs commented on surface water available from the City of Houston in Lake Livingston. The costs of running that water to other systems which have been solely dependent on groundwater are of interest. Some entities looking to replacement wells and/or new wells are more strategically placing them to easily provide for and add to existing infrastructure, greatly reflecting costs and impacts.

Mr. Martin noted that his district is the location of the two largest reservoirs in the state and has only one significant surface water user located within his district. He also contrasted the large expected growth of Ms. Jones district (Montgomery County) to his district, with Southeast Texas GCD not witnessing or expecting significant growth at all. Their DFCs are actually factored to encourage growth and bring economic resources to the area. Mr. Martin also echoed Mr. Holland's statement regarding the older, shallower wells in his district.

Judge Brieden was alarmed that Region G showed no water needs for Washington County. The whole reason why he is at the table is to ensure that the County's needs are met throughout planning and to be proactive process. Surface water is a primary driver for the County as their large population center has transitioned to surface water over groundwater. The 2011 drought did challenge their county, especially as weekend or seasonal properties have taken off in the rural areas with the felt need for ponds filled from groundwater wells, causing well issues. The DFCs are important to us for our current and future needs with projected growth to support.

Ms. Jones brought up a point of quality issues which did not seem to be addresses specifically by any of the considerations with increased costs of treatment from quality declines. With no further discussion, Mr. Mullican reiterated that this is not the only or last opportunity to amend this list and items discussed related to socioeconomic impacts reasonably expected to occur.

Ms. Jones moved to the next topic of a briefing and discussion of the impacts on the interests and rights in private property in considering DFCs by the districts, as required by Texas Water Code Section 36.108(d)(7). Mr. Mullican again was given the floor to present and outline the framework and guidance of the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater, as recognized under Texas Water Code Section 36.002, specifically what the section does and does not do (*see Attachment "B" for slides*). The procedural requirements for what should be considered in reviewing the private property rights factor are not prescribed in statute nor do TWDB rules provide any additional guidance. As such, Mr. Mullican established the following list of topics suggested for discussion:

- Existing uses within the GCD;
- Projected future uses within the GCD;
- Investment-backed expectations of existing users and property owners within the GCD;
- Long-term viability of groundwater resources in area;
- Availability of water to all properties and ability to allocate MAG through rules after DFC adoption;

- Whether immediate cutbacks would be required in setting a particular DFC or whether cutbacks, if any, would need to occur over certain timeframe;
- For outcrop areas, how the outcrop depletes rapidly in dry times, and whether drought rules or triggers based on the DFC/MAG for the outcrop could be beneficial to ensure viability of the resource during dry times;
- Economic consequences to existing users (i.e. cost to drop pumps, reconfigure or drill new wells upon water table dropping, etc.). Also consider the reverse – economic consequences of less water available to protect the existing users from the economic consequences relevant to existing users – reaching a balance between these two dynamics;
- Those GCDs with existing rules developed based on the current DFC might find it helpful to review the rules that the GCD considers relevant as we work to adopt DFCs over the next year. For example, the rules and Management Plan in place based on the current DFCs can help determine how a GCD currently impacts private property rights and whether those same interests are important as we work to adopt DFCs over the next two years; and
- Focusing on finding a balance, as that balance is defined by each GCD, between all of these considerations.
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Mr. Mullican again directed each GMA Representative and Interlocal Participant to answer to and speak on these considerations in relation to their individual representative area.

Judge Brieden gave thoughts on balance between the ownership and competing pressure of use across property bounds when using the same resource. How one can negatively affect your neighbor and minimize development is a dynamic that must be considered for the future. How all of these things fit together impact the growth and availability of supply to ultimately drive decision making.

Mr. Martin highlighted a couple of ways that his district protects private property rights. One being that his district's enabling legislation specifically states that a permit cannot be required for any well capable of less than 25,000 gallons per day. Secondly, is his district's goal to meet the Chapter 36 requirement of "highest practicable use" balanced with the other required factors and as evidenced by the current GMA 14 GAM Run.

Mr. Jacobs added a couple of his district approaches being through drought contingency plans for all users. In addition, any changes in the district's rules are also reflective of considerations of private property rights.

Ms. Jones read a statement into the record for use and documentation into the explanatory report regarding Lone Star GCD's approach and considerations on impacts on the interests and rights in private property (*see Attachment "D" for Lone Star GCD*).

Mr. Holland highlighted the placement of the ownership in Chapter 36. Chapter 36 is the backbone and the skeleton of GCD creation and fleshed out through enabling legislation, district rules, and Management Plan, giving a fundamental principal to GCDs to not only recognize but protect these rights. The DFCs are what is perceived today that the aquifer will tolerate from an

impact standpoint that will not damage the aquifer as a whole. What we know and have available today will fail in comparison with what we will know tomorrow. The important thing to remember with the DFCs, rules, management plans, and so on, is that they are able, and going, to change to reflect advances in science. Private property rights should be at the forefront, but also continued advances in the science, to conserve, preserve, and protect the resources.

Mr. Turco expanded on the primary purpose of the subsidence districts is to protect property from subsidence and do so through the regulation of groundwater. With the advancement of sciences over the years, the subsidence districts update regulatory plans to provide the most viable use of resources while stopping the subsidence throughout the region. These planning areas are at different conversion rates across the district, some down to 10% groundwater use, which has reflected in subsidence reductions. Still allow property owners to withdraw water, just have to meet the regulatory requirements in place through a fair share approach rather than a specific amount. We will continue to collect data to advance science, ensure our regulatory plan is reasonable, alternative sources are available, so that property owners can get the water they need and ensure the mix between groundwater and alternative water are sufficient to address subsidence in the local area.

Mr. Burkett read a prepared statement into the record for use and documentation into the explanatory report Brazoria County GCD's approach and considerations on impacts on the interests and rights in private property (*see Attachment "E" for prepared statement*).

With no additional thoughts, Mr. Mullican again reiterated that this is not the only or last opportunity to amend this list and items related to the consideration of the impact on the interests and rights in private property. Mr. Mullican requested each District Representative and Interlocal Participant to memorialize their comments and submit them for direct use in the explanatory report.

At the close of this discussion, Ms. Jones directed attention to a standing agenda item to discuss funding levels, participation, and any other aspects of the Interlocal Agreement. Mr. Burkett asked for clarification that an estimated \$5000.00 deficit remained in covering the contracts, referencing the financials which were provided. Ms. Jones confirmed the remaining deficit which would be addressed in a future meeting. There was no discussion or action taken.

The floor was opened for presentation and discussion by Members and participants of recent activities of interest to or impacting the GMA 14 planning group. Mr. Turco opened with a summation of activities wrapping up before the subsidence districts. Mr. Holland noted the district rules revisions to be considered in October by the district. Mr. Jacobs updated on the Lower Trinity GCD's Management Plan adoption process. Mr. Martin announced congratulations and bittersweet sentiments of the retirement of Mr. Jacobs at the end of the year. The group shared their well wishes, support, and appreciation for Mr. Jacobs and his district moving forward. Ms. Jones called attention to the revised draft Resolution Establishing Procedures for the Consideration, Proposal, and Adoption of DFCs by GMA 14. At our meeting in June, Shauna Fitzsimmons, with Sledge Fancher, reviewed the procedures set forth in the Resolution and answered various questions regarding the Resolution and the procedures

provided in it, and at that meeting, we decided to allow for an additional period of time to enable District Members the opportunity to submit comments or proposed revisions to the Resolution. All comments were submitted to Ms. Jones, which were then forwarded to Ms. Fitzsimmons. Comments were received from Southeast Texas GCD and Bluebonnet GCD, and each comment has been specifically addressed.

As Ms. Fitzsimmons has reiterated, the purpose of adopting these procedures is to clearly define the process by which the GMA shall consider, propose, and adopt DFCs, as such procedure is unclear under the statute. Additionally, the adoption of these procedures will ensure that the Member Districts comply with the statutory requirements applicable to the establishment of DFCs and that the explanatory report includes all the necessary information to create an administrative record that is defensible in the event the DFC are appealed after adoption. Ms. Jones asked Ms. Fitzsimmons to take the floor to review the changes to the draft resolution and answer any questions.

Ms. Fitzsimmons summarized the draft, its purpose, and the changes incorporated from the previous draft discussed at the previous meeting. With the importance of the explanatory report, it is equally important to create a defensible report in the formal consideration of DFCs and the procedures which those formal considerations will be based.

Ms. Jones advised everyone to read these procedures thoroughly as action will be taken at our next meeting to approve the resolution establishing the procedures. Ms. Jones requested all to please send any final comments regarding the procedures no later than October 17th.

Ms. Jones recognized TWDB Member Bruun for Board announcements or comments. Board Member Bruun voiced his appreciation of being at the meeting and expanded on a point from Mr. Mullican's presentation. The new Board is looking to be more involved in all areas of water, not only because of personal interest but the intent and directive of the Legislature in restructuring TWDB. Anything that you encounter from a GMA to your individual business, we have an open door policy and look forward to working with you.

Mr. French gave a quick agency update on GMA related work. First was Mr. Jacob's referenced Management Plan being reviewed and should be completed in the near future. He also extended his congratulations Mr. Jacobs again on his retirement. Second was a formal request from GMA 14 to give additional explanation and background to the total estimated recoverable storage number which the Executive Administrator responded to and Ms. Jones forwarded the response to the members.

With no further discussion in terms of recent activities or interest to the GMA planning group Ms. Jones asked for a motion to adjourn the meeting of the GMA 14 Interlocal Agreement participants and reconvene the Joint Planning Group meeting. Such motion was made by Mr. Burkett and seconded by Mr. Martin, adjourning the meeting of the GMA 14 Interlocal Agreement Participants and reconvening the Joint Planning Group meeting at 3:36 PM

Ms. Jones directed discussion of the progress to date for GMA 14 Joint Planning and remaining requirements. Mr. Mullican was given the floor and stated that the GMA will not make the deadline to include this round of DFCs into the current Regional Water Plan. He continued to summarize progress and highlight next meeting agenda discussion and action items of Texas Water Code Section 36.108(d)(8) regarding the feasibility of achieving proposed DFCs, Texas Water Code Section 36.108(d)(9) regarding other factors deemed for consideration by the GMA, and review and consideration of “non-relevant” aquifers documentation.

The next meeting date was discussed and set for Tuesday November 18, 2014, at 1:30 PM at the offices of the Lone Star Groundwater Conservation District, located at 655 Conroe Park North, Conroe, Texas 77303.

Without further discussion and there being no further business, following a motion by Mr. Martin and seconded by Mr. Burkett, the meeting was adjourned at 3:43 PM.

PASSED, APPROVED, AND ADOPTED THIS ____ day of _____

Chairman

ATTEST:

Secretary