

LONE STAR GROUNDWATER CONSERVATION DISTRICT

September 18, 2018

MINUTES OF CONTINUANCE OF PUBLIC HEARING ON PROPOSED RE-ADOPTION OF GROUNDWATER MANAGEMENT PLAN

The Board of Directors of the Lone Star Groundwater Conservation District (“District”) met in regular session, open to the public, in the Lone Star GCD – Board Room located at 655 Conroe Park North Drive, Conroe, Texas, within the boundaries of the District on September 18, 2018.

CALL TO ORDER:

President Moffatt called to order the Continuance of Public Hearing on Proposed Re-Adoption of Groundwater Management Plan at 2:32 PM, announcing that it was open to the public, and that it was a continuation of the Public Hearing originally held on September 11, 2018.

ROLL CALL:

The roll was called of the members of the Board of Directors, to wit:

John D. Bleyl, PE
Gregg Hope
Jace Houston
Roy McCoy, Jr.
Webb Melder
Rick J. Moffatt
Jim Stinson, PE
M. Scott Weisinger, PG
W. B. Wood

All members of the Board were present, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Kathy Turner Jones, District General Manager; Samantha Reiter, Assistant General Manager; Brian L. Sledge, General Counsel; District staff; and members of the public. *Copies of the public sign-in sheets are attached hereto as Exhibit “A”.*

PRAYER AND PLEDGES OF ALLEGIANCE:

President Moffatt led the Pledge of Allegiance and the Pledge to the state flag. Director Bleyl gave the opening prayer.

President Moffatt presented opening comments, announcing that today's notice of hearing had been provided in accordance with the law.

President Moffatt began by explaining today's situation, noting the Board is very sensitive to the fact that they have a limited time left in office before the new elected Board takes over in later this year. At the same time, the Board is also sensitive to not pushing through any big policy changes that would be better left to the incoming Board to address. Because of that sensitivity, at the September 11, 2018, board meeting, the Board deferred any action on undertaking new well spacing rules in favor of preserving the research and work that had been done over the last several years on that topic and packaging it up for the new Board to review and undertake as it sees fit. President Moffatt continued by saying, "while we are sensitive to not pushing through new policy changes, we are also sensitive to complying with all legal requirements that apply to the District, and of the need to hand over the District to the new Board with its financial affairs in order and in compliance with all state legal requirements. And that leads us to today's agenda item."

PRESENTATION AND DISCUSSION OF THE DISTRICT GROUNDWATER MANAGEMENT PLAN PROPOSED FOR RE-ADOPTION AS REQUIRED BY CHAPTER 36 OF THE TWC AND CHAPTER 356 OF THE TWDB RULES CONTAINED IN TITLE 31 OF THE TAC:

President Moffatt noted that the Board is facing a September 18th deadline to re-adopt the management plan and that the Board is sensitive to that deadline as well as comments received from Conroe Mayor Powell, Senators Creighton, Nichols and Representative Metcalf to consider delaying a re-adoption of the District Groundwater Management Plan. Mr. Moffatt mentioned that the District has received notification from both TCEQ and TWDB stating today's deadline for re-adoption. It was also noted that the District requested an extension of the submittal deadline from the TWDB in early August in hopes of allowing the new Board to be involved in the adoption process. The TWDB responded that there is not a process in place to extend the submittal deadline and suggested the District submit a plan and then submit either amendments or a new plan after the new board gets involved.

Moffatt further explained, the District has tried to change as little as possible from the current plan in drafting the amended plan for re-adoption. "We have used the updated data sets received from the Texas Water Development Board that we are required to use in order for the management plan to be approved. We have used the desired future conditions that were adopted by Groundwater Management Area 14 in 2016 and the corresponding Modeled Available Groundwater numbers, because we have to use either those numbers or the 2010 DFC and MAG numbers in order to adopt a plan that will be approved by the Texas Water Development Board. The TWDB has stated unequivocally that it will not approve a plan that has the Run D DFCs and their 100,000 acre-feet per year MAG numbers unless and until those numbers have been

approved by Groundwater Management Area 14. The TWDB has also unequivocally stated that it will not approve a plan without any DFC or MAG numbers. In order to comply with the law and have a valid management plan in effect, TWDB says we must, at this time, use the 2010 or 2016 DFC numbers, and we chose the 2016 numbers, which represent 2,371 acre-feet per year more in pumping than the 2016 numbers.”

“That said, we have included in the management plan language pointing out the actions taken by the Board in October of 2017 to adopt a new policy goal for increased groundwater production as represented by the Run D DFCs and the 100,000 acre-feet MAG numbers, and encouraging the new Board to immediately amend the management plan to reflect those numbers as soon as they are approved by GMA 14. But, until that happens, neither the current Board nor the incoming Board will be able to obtain TWDB approval for a valid management plan with those numbers in them.”

Following President Moffatt’s statements, Mr. Wade Oliver, hydrogeologist for the District, summarized redline changes to the draft Groundwater Management Plan.

PUBLIC COMMENT:

Mr. Kenny Eickelberg read a letter from Kathie Rey, Shenandoah city administrator on behalf of Mayor Ritch Wheeler voicing the mayor’s objection to the timing of the re-adoption of the plan and suggested tabling the adoption vote until a new board of directors was elected in November.

Ms. Rhonda Clifford asked a question regarding the timeline of the GMA 14 Joint Planning process to change the DFC number and adopt a new DFC. She also asked if the board could submit a plan but not adopt it at this time. She wanted to find the names of the GMA 14 members. It was explained that GMA 14 has already begun the process to establish DFCs for the third round of planning and she was directed the TWDB website for specific information on the GMA 14 members.

Mr. Larry Rogers asked if the District’s Groundwater Management Plan needed to be approved by the GMA 14. Ms. Jones stated that the District’s management plan is not required to be approved by the GMA.

Mr. Harry Hardman asked a question regarding the need for GMA 14 to approve the DFC and the timing. Ms. Jones answered that GMA 14 agreed to an expedited process for the third round of planning, which includes an 18-month timeline and that process is currently underway.

Ms. Cindy Hillman, HMW Special Utility District, commented that she had listened to today’s comments and thought that delaying the re-adoption of the management plan would only do harm to the new board of directors and she urged the current directors to adopt the resolution.

Written correspondence from Mr. Mike Bass was provided expressing concern, given the past and future growth with the Woodlands and Montgomery County, that the availability and

supply of water in addition to the potential for land subsidence should be a great concern for all. Making an over optimistic decision in determining how much ground-water to allow to be removed has a high a risk with the negative impact of the wrong decision is irreversible. Mr. Bass stressed that it is critical that the current and future boards approve a plan which reaffirms the current 64,000 acre-feet pumpage rate.

**DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION APPROVING
RESOLUTION #18-007 RE-ADOPTING DISTRICT GROUNDWATER MANAGEMENT
PLAN:**

President Moffatt opened the floor for discussion. One of the questions asked was if the District could submit a draft plan to the TWDB leaving the DFC numbers to be completed at a later date. Director Melder voiced concern at giving a plan to the new board that had not had adequate time for consideration. Director Hope voiced a personal objective to leave the new Board in compliance with the laws and in a position to succeed, rather than setting them up for failure by missing deadlines or breaking the law. After much discussion, Mr. Sledge offered that a compromise could be found by the board approving to submit the draft management plan to the TWDB for review but leaving the adoption of the plan for the new board to handle. He explained that failure to re-adopt the plan today would violate the TWDB rule requiring the plan to be re-adopted by the board 90 days prior to its expiration, which might result in an audit issue for the District, but that it could be done without violating state law requiring the District to have a valid management plan in place at all times. Mr. Sledge noted that the current plan expires December 17th. He explained that given his conversations with TWDB and TCEQ, this would allow for the District to submit the plan to TWDB to begin its review while still allowing the new board to review and adopt the management plan when they take office in sufficient time to have it approved by the TWDB prior to its expiration. Mr. Sledge stressed that pursuant to his conversations, the TWDB would need the District's adopted plan by mid-November to allow time for their final review and approval of administrative completeness prior to the existing plan expiring on December 17, 2018 and to maintain compliance with State laws. He also explained that the TCEQ staff assured him that it would take no enforcement action against the District under this scenario, as TCEQ would not consider the District to commit a violation of statutory requirements until after the December 17 expiration of the current management plan. Mr. Sledge stated that the board of directors could amend the draft resolution for re-adoption of the management plan to one that would submit it to TWDB for approval without adoption, and that if the current board scheduled a management plan re-adoption hearing for the incoming elected board for mid-November before it left office, the incoming elected board would have time to decide whether to re-adopt the management plan and thus determine for itself whether to stay in compliance with state law. After additional discussion and debate, it was decided to stand at ease in order for Mr. Sledge to amend the draft resolution for re-adoption of the management plan to reflect this new proposal.

President Moffatt announced that the hearing would stand at ease at 3:45 pm.

The meeting reconvened at 4:01 pm.

Director Stinson moved to adopt Resolution 18-007 amended to include revised language stating the District approves submission of the draft Management Plan to TWDB to begin its review, but without re-adopting it, allowing the incoming board to have the ability to review, amend and/or adopt the plan if it desires in sufficient time to prevent violating the state law requirement to have a valid management plan in place at all times. Director Bleyl seconded the motion. Director Wood called for discussion stating that his preference is to adopt the management plan today in order to comply with the TWDB rules and statute. Following discussion, the motion to adopt resolution 18-007 as amended passed 5-4, with dissenting votes from Directors McCoy, Melder, Weisinger, and Wood. ***A copy of the Resolution #18-007 is attached hereto as Exhibit "B".***

There being no further business, the hearing was adjourned at 4:09 PM.

PASSED, APPROVED, AND ADOPTED THIS 9TH DAY OF OCTOBER 2018.


Gregg Hope, Board Secretary

RESOLUTION NO. #18-007

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE LONE STAR
GROUNDWATER CONSERVATION DISTRICT
APPROVING SUBMISSION OF THE DISTRICT GROUNDWATER MANAGEMENT
PLAN FOR TEXAS WATER DEVELOPMENT BOARD REVIEW**

THE STATE OF TEXAS

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LONE STAR GROUNDWATER CONSERVATION DISTRICT

WHEREAS, the Lone Star Groundwater Conservation District ("District") was created by the Texas Legislature through the enactment of House Bill 2362, Chapter 1321, Acts of the 77th Legislature, Regular Session, 2001 (together with subsequent legislative amendments, the "Act"), pursuant to the authority of Article XVI, § 59 of the Texas Constitution, as a groundwater conservation district operating under Chapter 36, Texas Water Code, Section 59, Article XVI of the Texas Constitution, and the Act;

WHEREAS, the creation of the District was confirmed by the voters of Montgomery County on November 6, 2001, and as required by Chapter 356 of Title 31 of the Texas Administrative Code as in effect at the time, the District's original Management Plan was adopted and submitted to the Texas Water Development Board within two years of the confirmation election and subsequently amended and re-adopted in 2008 and again on November 12, 2013;

WHEREAS, Section 36.1072(e) of the Texas Water Code requires the District to review and readopt its Management Plan with or without revisions at least once every five years, and pursuant to Title 31, Texas Administrative Code, Section 356.54, the District must readopt the plan at least 90 days before the date the current plan expires;

WHEREAS, under the direction of the District Board of Directors ("Board"), the District's staff, legal counsel, and geoscientists reviewed, analyzed, and revised the District's Management Plan in accordance with the statutory requirements provided by Section 36.1071 of the Texas Water Code and the administrative requirements provided by Chapter 356 of Title 31 of the Texas Administrative Code;

WHEREAS, prior to September 11, 2018, a copy of the proposed Management Plan was provided to the Texas Water Development Board ("TWDB") for a preliminary and courtesy review, and all recommendations offered by TWDB staff were considered and incorporated into the revised Management Plan;

WHEREAS, the District issued notices in the manner required by state law and held a public hearing on September 11, 2018, and properly continued hearing to September 18, 2018 to receive public and written comments on the revised Management Plan;

WHEREAS, based on written and public comments received by the District, the proposed Management Plan was non-substantially changed;

WHEREAS, the District will coordinate with the appropriate surface water management entities after the public hearing and readoption of its Management Plan to afford surface water

management entities within the boundaries of the District the opportunity to review and provide comments to the District on its Management Plan;

WHEREAS, the Board finds that the revised Management Plan meets all of the requirements of Chapter 36, Texas Water Code, and 31 Texas Administrative Code Chapter 356;

WHEREAS, due to the passage of House Bill 1982 by the 85th Texas Legislature (Regular Session) in 2017, which amended the Act, the Lone Star Groundwater Conservation District Board of Directors will change from a nine- member appointed Board to a seven- member elected Board, and the first election under the new board structure is scheduled to be held on November 6, 2018;

WHEREAS, the current nine-member appointed Board is sensitive to the limited time in which it will remain in office and is attempting not to pursue any substantive policy changes that are better left to the incoming elected Board to pursue consistent with the priorities of its members;

WHEREAS, in that regard, the Board is sensitive to, and appreciative of, comments from local officials and legislators encouraging it not to pursue any such substantive policy changes in its remaining two months in office; however, the current Board members are required by statute to have a valid management plan in effect at all times, and by the rules of the Texas Water Development Board to timely readopt the Management Plan no later than September 18, 2018, and the Board is simply not comfortable engaging in an action, or inaction, that would cause the District to be in violation of state law;

WHEREAS, because of the foregoing, the District's current Board of Directors desires to place the incoming elected Board in a position of being able to comply with state statutes requiring that the District have a valid management plan in place at all times, but also desires to not take final action to readopt the management plan prior to the incoming elected Board taking office, consistent with requests from local officials and legislators;

WHEREAS, in that regard, the current Board of Directors, based upon discussions with the Texas Water Development Board and the Texas Commission on Environmental Quality, has identified a procedural path that will allow the incoming elected Board of Directors to readopt the Management Plan if it chooses to do so in ample time to allow the Texas Water Development Board to approve the readopted Management Plan prior to the expiration of the current Management Plan; to wit, the current Board of Directors will approve the draft Management Plan for submission to the Texas Water Development Board to begin its review of the Plan, but the current Board of Directors will not take action to adopt the Management Plan, but will rather defer to the incoming elected Board of Directors to take formal action to adopt the Management Plan;

WHEREAS, pursuant to discussions with staff of the Texas Water Development Board and the Texas Commission on Environmental Quality, if the incoming elected Board of Directors formally adopts the submitted plan no later than November 16, 2018, the Texas Water Development Board will be able to take action to approve the Management Plan prior to expiration of the current Management Plan on December 17, 2018, and the TCEQ will not take any enforcement action against the District prior to December 18, 2018, if the District pursues this path regarding readoption of the Management Plan;

WHEREAS, thus, this action by the current Board of Directors will place squarely in the hands of the incoming elected Board of Directors whether or not it will remain in compliance with the requirement under state law to maintain a valid approved Management Plan at all times; and

WHEREAS, the incoming elected Board of Directors can further amend and re-adopt the Management Plan at any point in time, and any number of times, and the current Board of Directors encourages the incoming elected Board of Directors to promptly review and take action to review and adopt the proposed Management Plan on or before November 16, 2018;

WHEREAS, this Management Plan re-adoption does not make any substantive policy changes to the existing adopted Management Plan, but rather complies with the updated data sets provided to the District by the Texas Water Development Board, fully acknowledges the substantive policy changes in management goals for the aquifer established by the Board of Directors in October 2017 to allow additional production of groundwater in the District if and when those adopted policy changes and corresponding changes to the desired future conditions for the aquifers are approved by Groundwater Management Area 14; and

WHEREAS, the current Board recommends that the incoming elected Board of Directors continue to work on pursuing changes in the desired future conditions with Groundwater Management Area 14, and to otherwise re-review this re-adopted Management Plan and potentially amend it consistent with state law and their own policy goals and priorities after they have been sworn in as directors of the District.

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE LONE STAR GROUNDWATER CONSERVATION DISTRICT THAT:

1. The above recitals are true and correct;
2. The current Board of Directors of the District hereby submits, without adopting, its revised Management Plan to the Texas Water Development Board to begin review in preparation for approval of the Management Plan by the TWDB on or before December 17, 2018, assuming that the incoming elected Board will timely adopt the Management Plan after it assumes the duties of office but no later than November 16, 2018;
3. The Board of Directors, District staff, and the District's legal counsel and geoscientist are further authorized to take all steps necessary to implement this resolution and submit the revised Management Plan to the TWDB for its approval;
4. The Board of Directors, the District staff, and the District's legal counsel and geoscientist are further authorized to take any and all action necessary to coordinate with the TWDB as may be required in furtherance of TWDB's approval, pending adoption of the Management Plan by the incoming elected Board of Directors, pursuant to the provisions of Section 36.1072 of the Texas Water Code; and
5. The current Board of Directors recommends that the incoming elected Board of Directors: (1) adopt this revised Management Plan on or before November 16, 2018, if it desires to continue to comply with the requirements under state law that the District have a valid and approved Management Plan in effect at all times; (2) continue to work on pursuing changes in the desired future conditions with

Groundwater Management Area 14; and (3) otherwise re-review this revised management plan and potentially amend it consistent with state law and their own policy goals and priorities after they have been sworn in as directors of the District and/or once satisfactory changes to the desired future conditions have been approved by GMA 14.

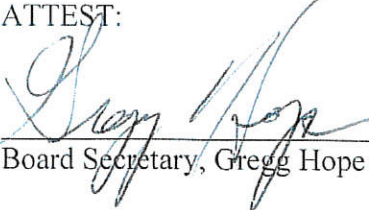
AND IT IS SO ORDERED.

PASSED AND APPROVED, WITHOUT ADOPTION, FOR SUBMISSION TO THE TEXAS WATER DEVELOPMENT BOARD TO BEGIN ITS REVIEW on this 18th day of September 2018.

LONE STAR GROUNDWATER CONSERVATION DISTRICT.

By: 
Board President, Rick Moffatt

ATTEST:


Board Secretary, Gregg Hope