

LONE STAR GROUNDWATER CONSERVATION DISTRICT

November 10, 2009

MINUTES OF PUBLIC HEARING ON PROPOSED CHANGES TO DISTRICT RULES

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 207 W. Phillips Street, Suite 300, Conroe, Texas, within the boundaries of the District on November 10, 2009.

The audio tape will serve as the official record for the Public Hearing on Proposed Changes to District Rules. The summary below is provided for convenience.

President Tramm called to order the Public Hearing on proposed changes to District Rules, which dealt with consideration of adoption of proposed Phase II(B) of the District Regulatory Plan (DRP), at 10:35 a.m.

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

Sam W. Baker
Reed Eichelberger, PE
Orval R. Love, PE
Roy McCoy, Jr.
Jim Stinson, PE
Richard J. Tramm
Scott Weisinger, PG
James B. Wesley
W. B. Wood

All members of the Board were present, with the exception of Director Baker, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Kathy Turner Jones, District General Manager; Brian L. Sledge, General Counsel; Jason Hill, Attorney; Mark Lowry, District Consultant; District staff; and members of the public. *Copies of the public sign-in sheets are attached hereto as Exhibit “A”.*

President Tramm announced he would now turn over the hearing to Brian Sledge, General Counsel for the District, for a presentation of the proposed changes to the District Rules.

In brief the General Counsel explained he would like to review some of the changes. Phase II (B), which is currently under review, is the actual conversion regulations of the District to try to get all groundwater use down to the level the District has determined is sustainable, which, based on the best scientific evidence to date, is 64,000 acre-feet. In Phase II (B), the

District has continued with the same approach following the submitted WRAP's (Water Resource Assessment Plan) which details the plan to successfully reduce groundwater production by 30% by the year 2015, in order to meet the 64,000 acre feet target. In this current Phase, the District is also setting forth some milestones, in an effort to track progress between now and 2015 and insure the progress meets the requirements of the District.

Mr. Sledge stated there are a number of people in attendance that were not at the Work Session and feels it is appropriate to hit the highlights of what was published for public review and comment and then discuss the additional changes that were recommended to the Board during the Work Session based upon written comments received from the public, and then receive additional public comment. At the conclusion of the hearing, if the Board wants to adopt the DRP Phase II(B), as published or in accordance with Counsel's recommendations for revisions or other revisions made in response to public comments, then direct Counsel to prepare a final draft for Board consideration. Counsel can do that while the Board continues with their Regular Board Meeting. Procedurally, we need to lay it out for the public, get public comments and get direction from the Board through a motion on what changes the Board wants, if any. Counsel will prepare the final draft, along with the Resolution, for final Board action.

On file with the District are copies of the notices that were published in the newspapers, posted publically, and otherwise provided in accordance with the law and the District Rules for this Hearing. This is the third Public Hearing on the proposed DRP Phase II(B). It was discussed at the last Public Hearing what would be in the published version that was published for consideration today. At this time, Counsel would like to highlight some comments received on the published version and his recommended responses to those comments. One of the big threshold questions that the District has received from the public is whether when the District requires the groundwater reduction in 2015—we simply require the groundwater reduction and leave it to the LVGUs on how they are to achieve the difference in their total demand in the amount of total groundwater produced, or whether we, in fact, require, like the Subsidence District in Harris County, they actually secure an alternative water source for the difference. At our last Public Hearing, as you will recall, we are moving the benchmark for what amount of groundwater authorization we would reduce from—from 2015 to 2009. This was to encourage more conservation. However, we still have received comments that by requiring the public to actually secure an alternative water source, or 30% of their 2009 permitted authorization amount, we are discouraging conservation by requiring them to purchase an alternative water source, where they might otherwise be able to achieve the groundwater reductions through conservation measures. So, the alternative would be to only focus as a regulatory body on the reductions of groundwater and not on how they make up the other 30%. So, as was discussed in detail this morning at the Board Work Session, I think when you weigh the pros and cons of both approaches, the pros probably outweigh the cons with just focusing the groundwater reduction and not requiring the acquisition of an alternative water source. Most permittees will have to do a combination of the two. If the District decides to proceed with only the groundwater reduction side of the plan, we can also abandon the limitation that we had on conservation strategies that would qualify as an alternative water source. Conservation will no longer be limited to only those conservation strategies that are metered, because we no longer require an accounting of securing an alternative water source; but we can, in fact, now monitor solely how much groundwater they pump and base compliance on that alone, and how they make up the difference will be left to them. That opens a door for a range of conservation opportunities that the public may wish to pursue.

The other critical item—if we make that change—is we need to address a limited number of permits the District has issued that exceed greatly the amount of production they have ever utilized with those permits. As was discussed earlier, it hardly seems fair, if the Board decides to go down this path, to allow permittees, who have somehow obtained a paper permitted right far in excess of their demand, to only go through a paper exercise to achieve these conversion obligations. If the District decides to proceed with eliminating the requirement of acquisition of the alternative water source of 30%, it is Counsel’s recommendation to include language that specifically states the District will make a final determination on what the final 2009 permitted authorization will be at the conclusion of this year—once the District has received the water production reports for 2009. After having done a brief review of LVGU permits with staff on how many permits have production authorization that unreasonably exceeds the water demand of the permittee, there is not a high number that fall in that category.

Another sensitive subject is the District continues to hear that the public wants additional time once the Rules are adopted, to determine what they want do and to determine whose GRP they are going to join or whether they are going to do one on their own. The District originally planned adopting its final GRP several months ago, but, being responsive to public comments, decided to address all comments and be accommodating to the public comments. Counsel feels it is in order to delay the dates by which the public is required to submit their groundwater reduction plan. Counsel’s recommendation would be to extend the following Phase II(B) deadlines : The Declaration of Intent (DOI) from March 1, 2010, to June 1, 2010, and the Groundwater Reduction Plan (GRP) from October 1, 2010, to January 1, 2011. The flip side of that is a topic that isn’t easy to discuss. If the District pushed those dates back, it would have to push the 2015 date back one year to 2016, because the 2015 date was based on an increment of time that would occur between the dates we adopt these final regulations and the dates the public has to implement an alternative water source project or otherwise achieve groundwater reduction and be up and running. It largely triggered off the date GRPs would be due. So, if the District extends the date that the GRPs are due to the District in response to public comment, the initial conversion obligation date would also need to be extended to 2016. However, the Board wants to send a **CLEAR** message to the public that this change in the deadline for the initial conversion obligation is the only one that will be made, and is caused by the Board’s desire to recognize the fact that this phase of the DRP was adopted a few months after it was anticipated.

Those are the recommendations Counsel has, and with the changes discussed during the Board Work Session and any other comments heard at this hearing, if the Board wants to proceed with final adoption of Phase II(B) today, Counsel will prepare a final draft.

Director Stinson stated that this has been an extremely complex process and to have taken the time and steps that the District has taken to listen to public comment was necessary to make sure that we do it right the first time. Director Stinson stated he is in favor of proceeding in accordance with the recommendations of Counsel.

Public Comment:

Tom Baudat, President, T&W Water Supply, stated his company is controlled, like all similar companies, by TCEQ. Mr. Baudat added, “We don’t operate the same as Boards and cities. We can’t conserve water by penalties or raising rates like Boards and cities can in a very short period of time. We may over pump our allotted amount of permitted water and receive a huge penalty from the District in one year that could put us out of business. We have no way of changing the patterns of our customers’ use, except by some sort of penalty which we cannot do

in one year. I don't think the District thought through all of this. The whole process is so complex that the District does not fully understand."

Brian Sledge, District Counsel, suggested that if Mr. Baudat participates with other LVGU's in a joint GRP, it would be the group's compliance to determine whether or not he would be placed in enforcement. A smaller system would be buffered by participation with a large group. Mr. Sledge also noted that the enforcement scenario outlined by Mr. Baudat for overproduction under a permit would exist under the current District Rules.

President Tramm asked if any other member of the public would like to offer comment on the proposed DRP Phase II(B). No member of the public expressed a desire to offer additional comment.

District Counsel stated one final comment. The District has tried really hard in this draft to say, in numerous ways, that the initial reduction in groundwater production for 2015 or 2016, whichever year the Board decides, will **not be** the final required groundwater reduction. The District has set a target of 64,000 acre feet as a total amount of groundwater we want to produce at that point as the best available current estimate of the sustainable groundwater production level for the District. Because of the increase in exempt groundwater production and permitted production by non LVGUs, we know that achieving this initial 30% cutback in 2015 or 2016, is not going to get us to 64,000 acre feet. Additionally, the District has some on-going studies to try to perfect the 64,000 acre feet number. It could possibly become smaller, but the District will need to wait for the study by USGS. Regardless, there is very likely going to be future groundwater reduction requirements in future phases of the District Regulatory Plan.

Director Wesley: Mr. Chairman, I would like to make a motion that we direct legal Counsel to prepare a final draft of the DRP Phase II(B), consistent with his recommendations in today's Work Session and this hearing.

Brian Sledge recommended that the Board continue the Public Hearing until the end of today's Board Meeting and then re-convene the Public Hearing at that time and make a decision whether to continue or adjourn the Public Hearing, depending on final action by the Board on Phase II(B) adoption. He recommended taking up Director Wesley's motion during the regular Board Meeting.

That concluded the overview comments by Mr. Sledge.

11:05 a.m. - President Tramm stated the Board would continue the Public Hearing until the conclusion of today's Board Meeting.

12:00 p.m. - President Tramm stated the Public Hearing was continued in conjunction with the Board Meeting, which remained convened, and recognized Brian Sledge, District Counsel.

Mr. Sledge distributed copies of the DRP Phase II(B) that included the changes requested by the Board, and stated if the Board was prepared to adopt the new revised version, Jason Hill, Attorney, had prepared a detailed Resolution its adoption. The Resolution sets forth the basis of the path the District has taken in promulgating the DRP Phase II(B).

Mr. Hill reviewed the resolution with the Board and stated the Resolution captures the essence of the debate that has taken place on this document since first presented to the public on September 8, 2009. The Resolution sets forth the basis for the Board's conclusion that this Regulatory Plan Phase II(B) should be adopted. The purpose of the document is to lay out the justifications the Board considered in adopting Phase II(B). The Board reviewed the Resolution.

(The Board's action on the Resolution adopting the DRP Phase II(B) is noted in the meeting minutes of today's Board Meeting).

The Public Hearing on Proposed Changes to District Rules was adjourned at 12:20 p.m.

PASSED, APPROVED, AND ADOPTED THIS 8TH DAY OF DECEMBER, 2009.

Sam W. Baker, Board Secretary

LONE STAR GROUNDWATER CONSERVATION DISTRICT

November 10, 2009

MINUTES OF BOARD WORKSHOP

The Lone Star Groundwater Conservation District (“District”) held a “Board Workshop” open to the public, at 207 W Phillips Street, Suite 300, Conroe, Texas, within the boundaries of the District, on November 10, 2009.

President Tramm called to order the Board Workshop at 8:00 a.m. announcing that it was open to the public.

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

Sam W. Baker
Reed Eichelberger, PE
Orval R. Love, PE
Roy McCoy, Jr.
Jim Stinson, PE
Richard J. Tramm
Scott Weisinger, PG
James B. Wesley
W. B. Wood

All members of the Board were present, with the exception of Directors Weisinger, Baker and McCoy, thus constituting a quorum of the Board of Directors. Also, in attendance at said meeting were Kathy Turner Jones, District General Manager; Brian L. Sledge, General Counsel; Jason Hill, Attorney; Mark Lowry, District Consultant; District staff; and members of the public. *Copies of the public sign-in sheets are attached hereto as Exhibit “A”*

President Tramm stated the Board Workshop is a summary presentation of proposed amendments and/or revisions to District Rules related to the adoption of Phase II (B) of the District Regulatory Plan. President Tramm then turned the meeting over to Brian Sledge, District General Counsel.

Director McCoy arrives at 8:10 a.m.

Mr. Sledge stated that following last month’s Public Hearing and Board Meeting there were some rule changes the Board wanted to pursue. The changes were made and posted, as required by District Rules, for public comment. The District received comments and those comments will be presented today for Board consideration. The main comment received that the Board should take under consideration, is the distinction between whether we utilize 2009 permit production as a baseline from which we would reduce groundwater reduction when we arrive at 2015. Whether the District would require LVGUs to reduce to that level and how they plan to

make up whatever difference they might need is up to them – whether they achieve it through conservation or obtaining an alternative water source; or, whether the District requires them to obtain an alternative water source for their remaining 30%. When we changed the date from 2015 to 2009, we remove a significant incentive for permittees not to conserve between now and 2015. Should the District only be concerned with how much permittees reduce their groundwater production and leave it up to each of them **how** they plan to make up the difference, or whether we are concerned with an actual conversion and groundwater reduction. Mr. Sledge recommends the District only be concerned with the reduced amount and not require permittees to obtain 30% of their supply from 2009 levels, from an alternative water source. Counsel thinks the only problem the District will need to address, if they choose to go down that path, is there are some permit holders that hold permitted authorization in amounts much greater than they need. If a permit holder knows they are holding too much water, it is an incentive to voluntarily cut back on the permitted amount. If the District removes that incentive to reduce the permit amount, it would be incumbent upon the District to go in, after we receive 2009 pumpage reports in February, and review those permits and make certain that there are not permittees who hold so much permitted water that all they have to do to comply with these regulations is reduce the amount of their permit. If staff reviews the amount permitted versus amount in total production, some will definitely stand out as being worthy of review. That is the issue – whether we go down a reduction only path or reduction and alternative water source path. If the District chooses to pursue a reduction part only, the main benefit would be the promotion of conservation throughout the District. We can eliminate the language about metered conservation, as we would no longer need an accounting mechanism on alternative water source. All the District would need to know is whether the permittee actually produced, come 2015, the amount required. That benefit outweighs the benefit of ensuring everybody gets on an alternative water source.

Mr. Sledge stated the District should go off the permitted amount, with the Board to review some of the permits that exceed those standards. These standards are not drafted in this document, as it will be up to the Board to determine on a case-by-case basis.

Director Wood stated that it is the Board's objective to get to the 64,000 acre feet. The District has the authority to tell water suppliers they have to reduce to 70%, but questions whether the District has the authority to tell them if they have to purchase water or achieve it through conservation.

Counsel states the District has the legal authority to be concerned with water reduction. Mr. Sledge states he and associate Jason Hill have prepared a couple of options. LVGU still have to come up with a GRP and now, instead of requiring them to achieve these reductions through an alternative water source, they now have to identify all alternative water sources or some other water conservation method.

The District is moving towards achievement of the long term sustainable deal with the aquifer. If you read through the published version of the DRP, the District has tried to say it in as many ways as possible, **this is not going to get us to the 64,000 acre feet – it is only a starting point.** There will be additional conversions in the future. What the District has tried to accomplish in this first conversion effort, is to take positive steps toward groundwater reduction. Before we can begin fine tuning, we need to get the results from the USGS Study and determine what the impacts for the aquifer are. Early findings are probably not going to be as favorable as we would like, but this is a great first step.

Counsel stated if it was the Board's desire to pursue the groundwater reduction only schedule, he would like to pass out the revised DRP Phase II(B), labeled "70 Only". Mr. Sledge went on to state that by 2015 each LVGU in the District must meet its initial conversion obligation – having reduced its groundwater production to no more than 70% of its total qualifying demand and actually met not less than 30% of its total qualifying demand by implementing water conservation measures and/or using an alternative water source. In addition, LVGU must also achieve any further groundwater reductions that may be adopted in the future by the District.

The District may authorize an LVGU to convey or transfer a permit issued by the District only if the conveyed or transferred permit is amended to authorize the production of not to exceed 70% of the transferring LVGU's Total Qualifying Demand and the type of use authorized by the conveyed or transferred permit remains the same. The District shall not authorize the conveyance or transfer to an LVGU of any permit held by a non-LVGU. It is Counsel's recommendation that after the District adopts the Regulatory Plan to go back and make conforming changes in the regular District Rules, including the section of transferring a permit and that would be the best place to define all of the details.

Under "Plans for Meeting Initial Conversion Obligation", this paragraph pulls the requirements from the last Phase of the Regulatory Plan over the outlying years 2015-2045. If the District wants to rely on this ability to exceed production under the strategy of "on the average", the permittee would need to include some information in their GRP, identifying what that is going to be.

Mark Lowry, District Consultant, stated the damage to the aquifer comes when it is overproducing year after year. The water is being released out of the clay zone and the zones become "de-watered" and collapse.

Mr. Sledge stated that one of the things the District will be looking at each year when permits are renewed, amended, etc., is has groundwater or an alternative water supply become available. Once we reach the amount that exceeds sustainability, the District is not supposed to issue any more permits. Do we still need the Early Conversion Incentive—I am inclined to think we still do. It still encourages someone to do something early, before they are required.

"Total Qualifying Demand" means final volume of groundwater that a permit holder is authorized under the terms of a permit issued by the District to produce in calendar year 2009. Such final volume shall be determined by the District after receipt of water production reports due to the District on February 15, 2010. The District may reduce the final volume by amending the permit if and to the extent it determines that the amount previously authorized in the permit unreasonably exceeded the 2009 groundwater demand of the permit holder.

Counsel stated the District has received a lot of comments from the public stating they would like additional time to submit their plans. When the District originally envisioned the 2015 date, they had also envisioned adopting the rules at an earlier date. The delays in adopting these rules were caused, primarily, by the District being responsive to the public. Two years ago the District had people wanting to pursue other options, so the Board adopted the WRAP Phase II(A), which delayed this and gave the public an opportunity to identify other options. Those delays, with the District being responsive to those requests, have caused a delay in the ultimate adopting of this document. The District cannot continue to delay and still expect the public to

meet the 2015 obligation. It is my recommendation to push back the dates by which DOIs (Declaration of Indent) are due from March 1, 2010, to June 1, 2010, and push back the GRP from October 1, 2010, to January 1, 2011, and finally by moving the conversion date from January 1, 2015, to January 1, 2016.

Director Tramm stated the Work Session was concluded and the District would have a Public Hearing to continue discussion during the Regular Board Meeting.

There being no further business, the Board Workshop was adjourned at 9:35 a.m.

PASSED, APPROVED, AND ADOPTED THIS 8th DAY OF DECEMBER, 2009

Sam W. Baker, Board Secretary