

Minutes for Meeting/Hearing of the Hays Trinity Groundwater Conservation District

Date: Wednesday, February 8, 2012
Time: 5:00 pm
Place: Dripping Springs City Hall
Located: 511 Mercer Street, Dripping Springs, Tx. 78620

5:05 pm: Regular Meeting Opens

Board Present: Jimmy Skipton-President, Greg Nesbitt-Vice President, Mark Key-Secretary/Treasurer, Joan Jernigan, & Ed Pope

Staff Present: Rick Broun-General Manager, Tressy Gumbert-Administrative Assistant, and Alex Broun-District Geologist, P.G. 4845

The following subjects were considered for discussion and/or action at said meeting:

- **Board Roll Call:**
 - Rick Broun:
 - Roll Call was taken, a quorum was present
- **Review of Board Meeting Protocol:**
 - Jimmy Skipton:
 - Explained meeting protocol to audience.
- **Consider approval of prior meeting Minutes:**
 - Tressy Gumbert:
 - Jimmy Skipton and Mark Key approved and signed Meeting Minutes for December 15, 2011.
- **Monthly Financial Report & Budget to Actual Report:**
 - Rick Broun:
 - Mark Key reviewed and signed off on the Financial and Budget to Actual reports.
- **General Manager's Report of Activities:**
 - Rick Broun:
 - Staff has completed a monitor run and collected water level data from transducers in January. From November to December 2011 there was an average increase in the well water levels of 2.3 feet.
 - The transition to begin existing permits in January permit continues to be successful.
 - District attended the Austin Geological Society lecture on February 6 and the TCEQ Drought Emergency Planning Workshop on February 7. Future meetings are the Rain Harvesting Forum on February 10 and a Stakeholder's Group considering a GCD in Comal County on February 23.
 - The District is working with a local business, Bill Bailey's Signs, to design graphics for our new truck. A high estimate of \$750 and a low estimate of \$650 were provided
 - 4 Public Water Connections were submitted in January by Dripping Springs Water
 - 14 new Well Registrations were submitted in January: 11 Domestic, 2 Ag, 1 Irrigation
 - Reminded the Board if they attend any meetings, tours, events, or lectures concerning groundwater they need to inform staff.
 - The District encourages the use of rainwater collection systems and promote artificial recharge of the aquifer through such means as proper brush management and re-establishing deep rooted native grasses
 - Recommends moving from Critical to Alarm stage as the Blanco and Pedernales Rives have gone 60 plus days with flow above stage trigger.
- **Acknowledgment of Bank Reconciliations and Monthly Invoices:**
 - Rick Broun:
 - Mark Key has reviewed and signed off on bank statements and monthly invoices.
- **General Comments from Board & Staff:**
 - Ed Pope:
 - Would like to explore ways to strengthen Resolution 20111215 that was adopted in December 2011.
 - Al Broun
 - Has been reviewing Comal, Blanco, and Travis County logs.
 - Doesn't agree that the District wait a month to move from one drought trigger to the next.
 - Jimmy Skipton
 - To Greg Ellis: Does moving from one trigger to another have to go before the Board as an agenda item?

Greg Ellis

- o Non-policy making decisions can be delegated to the staff.

Greg Nesbitt

- o Put Drought Condition update on Agenda as a permanent item.

- **Public Comments: Non-Agenda Items**

The following presented: Jon Cobb and John Sone

5:05 pm Pre-Hearing Conference Opens

Hearing Item:

Discuss and Possible Actions on:

A. Camp Young Judaea

- Board to hear previously contested appeals to qualify for standing from: Johanna L. Smith and Wimberley Valley Watershed Association
- Applicant requested an increase in permit production from 8 acre-feet to 13 acre-feet

Public Comments:

The following presented: Pokey Rehmet – presented on behalf of Johanna Smith who is withdrawing her contested case filing. Jeff Vasgaard – Representative of Wimberley Valley Watershed Association reported that WVWA is withdrawing their contested case against CYJ's permit request.

Applicant Comments:

The following presented: Rick Bell with CYJ – The retreat center has grown by 65%. Landscaping, softball and soccer fields have been added as well as four new structures. The camp has had no water production increase since 2006 when they were granted 8 AF. The future plan is to use rainwater for irrigation. The camp has put signs up to educate on water conservation, timers have been installed in the showers and the camp uses low flow toilets.

Board & Staff:

Rick Broun

- o Camp Young Judea requesting - 4,236,063 gallons (13 Acre Feet)
- o 2011 actual production - 2,562,540 gallons (7.8 Acre Feet)
- o Current permit – 8 Acre Feet
- o Recommendation for new permit – 3,421,436 (10.5 Acre Feet)

5:25 Hearing Closed

Motion

Mark Key: Approve three (3) year permit for 12 Acre Feet.

Greg Nesbit: Seconded motion

Ed Pope: Due to drought conditions recommends a one (1) year permit.

Mark Key: Withdraw previous motion and make new motion to approve two (2) year permit for 12 Acre Feet.

Vote: 5-0 in Favor (Jimmy Skipton, Mark Key, Greg Nesbitt, Joan Jernigan, and Ed Pope)

Agenda Items:

Discuss and Possible Actions on:

1. Item #4: Update on Dripping Springs Water Supply Corp permit with HTGCD

Board & Staff:

Jimmy Skipton

- o DSWSC and HTGCD have exchanged paperwork concerning connections.
- o Hopes to have something on permit in 6 to 8 weeks.

Public Comments:

None provided

2. Item #1: Rule Committee

Board & Staff:

- Jimmy Skipton
 - o Committee making progress with rule modification however process is taking longer than anticipated.

Public Comments:

None provided

3. Item #2: GMA9

- Update on DFC Petition with Texas Water Development Board (TWDB)

Board & Staff:

- Jimmy Skipton
 - o TWDB staff recommended staying with the 30 foot drawdown
 - o TWDB has scheduled a hearing on March 1, 2012 to make a decision on the petitioned DFC

Public Comments:

None provided.

4. Item #7: Blue Hole Park / City of Wimberley / Wimberley Water Supply Corp

- Use of 700,000 gallons for landscaping during Board approved drought stage conditions

Board & Staff:

- Jimmy Skipton
 - o Agenda item #7 & 8 are related and discussed at the same time.
 - o This item was tabled at the previous Board Meeting due to Joan Jernigan being out of town.
 - o People of Wimberley have been upset with previous decisions made by the District Board because they felt the Board was not practicing conservation however some of those same people support the park using large amounts of water to water Saint Augustine grass, over 50,000 gallons last month alone.

Applicant Comments:

The following presented: Don Ferguson – The area has had Saint Augustine for years. It will tolerate high foot traffic and helps to restore and maintain the bank in flood plain areas. The grass is established and is no longer being watered. The park is sustainable, great effort and expense was put into the design process. The park has been designed around water conservation and education every structure is equipped with either rainwater collection or a water demo feature.

Public Comments:

The following presented: Jeff Vasgaard & Jon Cobb

5. Item #8: Blue Hole well registration

- Application for an existing monitoring well to become an irrigation well.
- Well is not currently operational

Board & Staff:

Jimmy Skipton

- The park is within Wimberley Water Supply's CCN and should be using that water not groundwater.
- Feels that approving the well registration will lead to unwarranted well registrations.

Joan Jemigan

- Concerned with the negative impact the well previously had on neighboring wells when tested.
- Advocate of rainwater collection.

Mark Key

- The application to change the use of the well to an irrigation well should have been approved by staff and never brought before the Board.

Applicant Comments:

The following presented: Don Ferguson – Plan to use the well to fill a 25,000 gallon tank for fire protection purposes and temporarily water soccer fields to establish grass. Estimated pumping amount for irrigating soccer fields is 25,000 to 50,000 gallons a week. Future plan is to use effluent irrigation for watering soccer fields. The park will not be charging an admission fee. Neighboring wells were affected when the well was tested because it was pumping 300 to 350 gallons per minute, there will not be high volumes or long term pumping taking place. If the park finds that neighboring wells are impacted they will stop pumping from the Blue Hole well.

Public Comments:

The following presented: Bill Davis & Jon Cobb

Motion

Mark Key: Table item.

Jimmy Skipton: Seconded motion

Vote: 4-1 in Favor (Jimmy Skipton, Mark Key, Greg Nesbitt and Joan Jemigan) Against (Ed Pope)

6:30 Break

6:40 Reconvene

Mark Key introduced Representative for House District 45 Jason Isaac.

Representative Isaac spoke briefly on a bill filed during the last session. The bill would give more authority to groundwater districts, save money on election costs, and increase fees collected by the district. Representative Isaac also announced that he has an office in the Pioneer Bank building and encouraged citizens to schedule a time to meet with him to discuss any questions, concerns, or suggestions they may have.

6. Item #11: Lower Trinity telemetry well: health & condition of the aquifer

- Investing in technology to transition quarterly data to daily data on District website
- Possible locations: Whisenant & Lyle and/or Jennings well

Board & Staff

Rick Broun

- The Texas Water Development Board doesn't have a lower Trinity telemetry well in their field of research in our area.
- Interested in the possibility of using the Whisenant & Lyle well as a lower Trinity telemetry well as it is already has a transducer installed.
- Would help in tracking the health of the aquifer.
- Would be an educational tool for District staff, TWDB, and GMA9.
- Barton Springs is interested in contributing funds to help support the project.
- Texas Water Development Board would install and setup the remaining hardware and software and host the data on their website.
- The cost for the telemetry well is estimated to be between four and five thousand dollars.

Mark Key

- Supports having a telemetry well, however doesn't feel that it's wise to spend the money considering the sale of LCRA may cause District funding to decrease.

Ed Pope

- Perhaps the District could solicit more funding to help with the cost.
- Supports the idea but would like to get more information in regards to time frame for completing the project.

Jimmy Skipton

- Would like for staff to move forward in gathering information to bring back to the Board.
- Is there money available in the education budget to help fund the project?

Joan Jernigan

- Is in support of a telemetry well.
- Suggested having a fund raiser or applying for a grant to help with the cost.

Greg Nesbitt

- Is in support of a telemetry well however Board should be conservative with funds at this time.
- Would like more information in regards to maintenance and upkeep.

Public Comments:

No public comments provided

6:55 Hearing opens

Hearing Item:

Discuss and Possible Actions on:

B. JP & LP Rentals LLC

- Permittee requesting a one-year permit to produce 2 Acre feet. According to Resolution 20111215
- Project has 6 homes (each containing two bedrooms, one bath) and 1 workshop on site.
- Location: Near intersection of RR12 and Brownson Lane.

Public Comments:

The following presented: Brent McNeill, Deborah Williams – did not receive mailed notice of the application, Stan Johnson- knows of several neighbors who did not receive notice of application. Bill Howell also presented

Applicant Comments:

The following presented: Joe Peter- Diligent in effort to comply with District requirements. Felt that he had made proper notification. The 6 rental properties will have metal roofs and rain water collection will be installed. Plan to use effluent water for irrigation. The property is 6.96 acres, the request is to use less than 11% of the water that falls on the property annually.

Board & Staff:

Ed Pope

- Explained the contested case process.
- If anyone wants to contest the application they are free to do so.
- Encourage everyone to listen to all parties prior to contesting.

Al Broun

- Rule 11 is very specific, has all the requirements of Rule 11 been met?

Rick Broun

- Was satisfied with application and paperwork received from Mr. Peter and felt the application was administratively complete prior to the meeting.
- Does not recommend that Mr. Peter be granted 264 gallons a day per structure but realizes that it follows the Resolution adopted by the Board in December.
- Feels the Resolution is not tight enough and open to loop holes.
- According to the Texas Administrative Code, Title 30 – a single family residence less than 1500 square foot uses 180 gallons a day. Therefore recommends a permit for 1.5 AF.

Mark Key

- This is the second time in two months the District has been caught by its own rules. Recommends dropping everything and getting rules modified so they are more easily understood, starting with Rule 11.
- Respects property owner rights to the water beneath their property.
- Mr. Peter was told by staff that his application was administratively complete.

Jimmy Skipton

- Applicants have the right to request a variance on a Rule.
- Understands and respects the concerns of Mr. Peter's neighbors as well as Mr. Peters rights as a land owner.
- Mr. Peter could install rainwater collection and would have never had to approach the District.
- Would like to table the issue to give the District time to confirm that the information received is correct.

Motion

Ed Pope: Continue hearing at the next regularly scheduled Board Meeting
Jimmy Skipton: Seconded motion
Vote: 5-0 in Favor (Jimmy Skipton, Mark Key, Greg Nesbitt, Joan Jernigan, and Ed Pope)

7. Item #5: Replace Resolution 20080424 with newly passed Resolution 20111215

Board & Staff:

- Mark Key
 - o Old Resolution will expire when the MAG is approved
- Al Broun
 - o The new Resolution is flawed
- Ed Pope
 - o New Resolution is simply a way to allow small businesses to apply for a permit it doesn't mean that they will be granted the 264 gallons a day.

Motion

Mark Key: Replace Resolution 20080424 with Resolution 20111215
Greg Nesbitt: Seconded motion
Vote: 5-0 in Favor (Jimmy Skipton, Mark Key, Greg Nesbitt, Joan Jernigan, and Ed Pope)

Public Comments:

None provided.

8. Item #6: Update on lawsuit: Plaintiffs vs. HTGCD

- Wimberley Valley Watershed Association
- Johanna L. Smith, H.K. Acord, Janet Acord, James R. McMeans and David Glenn

Legal Counsel:

- Greg Ellis
 - o Wimberley Springs Partners has intervened in the case.
 - o Has been in contact with WSP lawyer, Russ Johnson.
 - o Plaintiffs, although opposing our request to abate, has asked for an abatement until after the DFC is approved.
 - o Permittee is opposed to the plaintiffs request for abatement
 - o Will be preparing a schedule on how to proceed

Board & Staff:

- Jimmy Skipton
 - o The District has spent around \$14,000 on legal fees to this point.
 - o Is in Favor of filing a motion to move forward

Public Comments:

The following presented: Jon Cobb and Bill Davis

9. Item #9: New Order 153

- Determining the District's Records Management Policy

Board & Staff:

- Jimmy Skipton
 - o Required for District to be in compliance.

Motion

Jimmy Skipton: To approve Order 153

February 8, 2012 Board Minutes continued

Ed Pope: Seconded motion

Vote: 5-0 in Favor (Jimmy Skipton, Mark Key, Greg Nesbitt, Joan Jernigan, and Ed Pope)

Public Comments:

None presented

10. Item #9: New Order 154

- Affirming 2012 Budget

Motion

Jimmy Skipton: To approve Order 154

Greg Nesbitt: Seconded motion

Vote: 5-0 in Favor (Jimmy Skipton, Mark Key, Greg Nesbitt, Joan Jernigan, and Ed Pope)

Public Comments:

None presented

7:45 p.m. Break

7:55 p.m. Reconvene

11. Item #3: Annual Report Presentation

- Review 2011

Board & Staff:

Rick Broun

- If someone from the audience would like a copy of the Annual Report please email the office.
- Presented Annual Report to the Board reviewing the highlights and performance standards.

Al Broun

- Wimberley Springs Partner pumped less in 2011 than they had the previous two years.
- The Golf Course isn't the cause of the drop in Jacob's Well, it's the lack of recharge.
- There were 96 new wells drilled in 2011. Close to half of the new wells were drilled into the Cypress Creek Watershed. Adding additional wells does two things; 1) pulls down the aquifer and 2) Recharge zones get covered causing a lack in aquifer recharge.

Motion

Jimmy Skipton: Approve Annual Report

Joan Jernigan: Seconded motion

Vote: 5-0 in Favor (Jimmy Skipton, Mark Key, Greg Nesbitt, Joan Jernigan, and Ed Pope)

Public Comments:

None provided.

12. Item #12: Review Rules Committee progress with Greg Ellis

- Confirm, guide and make suggestions from legal standpoint
- Executive session may be required

Board & Staff:

Jimmy Skipton

- So far the biggest question during Rule Committee sessions has been contested case submission
- According to District rules the applicant has 10 days after the Board's decision on the permit to file a contested case.

Rick Broun

- o What is the function of the District in regards to House Bill 1763?

Legal Counsel:

Greg Ellis

- o There isn't a legal stance that requires you to do one or the other.
- o Filing 10 days after is not prohibited however; it is not standard practice of the state in administrative law.
- o Goal is to streamline the permitting process.
- o Important to provide everyone their due process rights, the applicant and any potential protestor.
- o To streamline the process generally you don't have 90-120 days to try and get a permit issued. You schedule a public hearing; notify everyone about the hearing and at the end of the hearing if there isn't any problems take a vote.
- o Most administrative agencies have the staff propose a permit then the applicant can file a protest. Typically groundwater districts don't do that, if the Board decides they want to add a condition or change something on the permit and vote that night they give the applicant some period of time to review and protest.
- o The applicant needs to have a record put together to appeal the Boards decision.
- o Term permits can be addressed and changes made at time of renewal
- o Rules must provide for public hearing, preliminary hearing, evidentiary hearing, and a final hearing.
- o The protestant, by law, has the right to demand to be heard by the State Office of Administrative Hearings (SOAH)
- o There are deadlines in Chapter 36 for issuing permits
- o Working on a set of rules to provide to the District that will implement the new legislation
- o Suggests that the general manager publish a proposed permit, schedule and conduct a public hearing, if no one protests vote on permit. If someone does contest schedule a preliminary hearing for standing.
- o The Board can contract with someone to conduct the preliminary hearing, for example: SOAH or a hearing examiner.
- o The Board has the ability to determine which applications may or may not be protested however you must be very careful in doing so.
- o The District must contract with SOAH however if the protestant demands that SOAH hear the case then the protestant is responsible for the cost.
- o The intent of HB 1763 was to require a District to have a Management Plan approved by the TWDB in place. It was not the intent of legislatures to shut districts down for 5 years. Districts are required to allow the maximum amount that can be withdraw and still achieve the desired future condition.
- o Exempt wells are an issue in that the 25,000 gallons a day was not meant to be a production limit, it was meant to be a capacity limit on wells.

Public Comments:

The following presented:

.....

13. Update from Greg Ellis on all on-going lawsuits and District legal matters

- Executive session may be required

Legal Counsel:


Greg Ellis

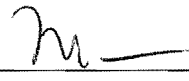
- o Has spoken with Dripping Springs Water Supply's lawyer, believes they are looking at withdrawing the lawsuit.
 - o Contested cases have been threatened against possible permits
 - o There are some open enforcement issues where the District sent our NOVs which lead to prolong negotiations on settling the violation. Those are in limbo at this time.
-

8:45 p.m. Went into executive session

9:10 p.m. Came out of executive session

9:10 p.m. Meeting Adjourned

Approved:  Date: 4-11, 2012
 Jimmy Skipton, President

Approved:  Date: 4/11, 2012
 Mark Key, Secretary/Treasurer