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Meeting of the Proposed Edwards Aquifer Recovery Implementation Program (RIP)

San Antonio Water System

San Antonio, Texas

September 6, 2007

Notetaker: Rick Illgner

Welcome

Calvin Finch of SAWS welcomed attendees and introduced legislative aides from the offices of the Lt. Governor, Senator Hegar, and Representative Puente. Calvin also introduced Robert Potts who, in turn, introduced Velma Danielson, the new General Manager of the Edwards Aquifer Authority and she made a few comments.

Anna Munoz indicated that all of the Steering Committee appoints have been made except for Bexar Met and Texas Living Waters and introduced the members individually. Kerim Jackman was sitting in for Joe Aceves and Laura Stryjewski was attending for Bexar Met.

Status of USFWS Review of Edwards Aquifer Legislation – Adam Zerrenner

Adam discussed the two ESA workshops that were held in San Marcos and Seguin. A third workshop will be held the week of September 24, time and location have not been determined.

Next, Adam announced that he is making arrangements to have Wendy Brown, Recovery Chief from the Regional Office make a presentation to the group after January.

Adam discussed the process to evaluate the pumping limits in the Article 12 of Senate Bill 3 that passed during the 2007 Legislative Session. The team conducting this evaluation will consist of Tom Brandt, Steve Cullinan, Steve Chambers, Will Amy, and Pat Connor have met once. They will gather all pertinent biological and hydrological information and compare changes to springflow with the old caps vs. the new caps to determine what, if any, impacts are there to the species and habitats. They will use a structured decision-making model as a tool in the analysis and utilize personnel from other USFWS offices and the USGS.

Additionally, the team will re-examine the take and jeopardy numbers associated with Comal and San Marcos springs. He has been informed by USWFS solicitors that the Federal Court in Midland must be informed of any proposed changes to the numbers. The solicitors have also informed him that they see no conflict in Article 12 of Senate Bill 3 and the Judge Bunton decision.

Question/Answer

Q – What is the timetable for completion?

A - The work on the pumping caps should be complete in a couple of months. However, the work on the take and jeopardy numbers will take longer and no specific timetable has been set.

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MOA Committee Items – Myron Hess

Weir LaBatt stated this was his first meeting, who are the members of the MOA group, he needed information on the process. Myron introduced the other members of the MOA committee and reviewed his cover MEMO and the MOA (**Attachment A**). The two biggest issues in the MOA were additional representation on the Steering Committee (Committee) and a decision-making model.

Questions/Comments/Responses

C – It appears the MOA focuses on adding new members to the Committee and voting.

A – True

C – There are several references in the MOA that direct the Committee to do something that will require by-laws.

Q – There is no definition of quorum and that may be a problem in voting. Are the voting percentages intended to be a % of a quorum or a % of the whole?

A – Of the whole, a percent is not intended to encourage a road block (especially since there are alternates available).

Article 1 – Purposes

Q – Document only refers to recovery which is after the fact. What about preservation?

A – Recovery is an inclusive term.

Article 2 – Goals

Q – Reasonable flexibility is substituted for adaptive management, why not use adaptive management as it is recognized in several arenas.

A – If both terms are used, need to have a definition of adaptive management. The thought was that not using adaptive management showed this situation was different.

C – Adaptive management is broader and is a key term.

C – Adaptive management is used in the Authority’s HCP.

C – We need to balance preservation of species with water supplies and encourage innovation.

C – Research speaks to “development and implementation”, need to recognize that a body of knowledge already exists.

C – In previous discussion, there has been a lot of talk of seeking Federal \$ for water supply projects. This needs to be a goal.

A – The MOA group was informed Federal funding for a water supply has not been allowed on other RIPs, so it wasn’t listed as a specific goal.

C – GBRA offered some alternative language (**Attachment B**).

C – It was pointed out that seeking Federal funding is part of the purpose.

Article 3 – Definitions and Construction

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C - There is no reference in the document to any Federal requirements.

A – The USFWS will be asked to review the document.

Article 4 – Participation

C – Need to add public before advanced notice; need to think about public avenues and notice.

Q – Does consensus mean a “climatic” vote?

A – No.

C – The MOA is generally broad; however, it is very specific regarding additional representatives, doesn't that overstep the Committee?

A – The fundamental issue to alleviate the problem with the federal and state process is representation; therefore, the MOA group thought it best to specify the membership.

C – If the initial regular permits mentioned in (a) are from the Authority, it should be stated as the RIP will not issue any permits.

Q – Do the suggested names fix the membership issue?

A – It depends on the group.

C - This is my first meeting as a Committee member and I am being asked to add new members when I really didn't know the existing Committee members. Asking me to vote first is not smart. A suggestion is to give the Committee the ability to appoint new members to keep the process going.

C – The MOA is not mandating; it is recommending.

C – Also a new appointee to the Committee and just received the MOA; therefore, echo the comments about taking action..

C – Regarding original discussion of maintaining balance, note that five persons are being recommended.

A – The Legislature recommended an open process by allowing new members; if we are going to fix it, we should do it now.

C – Agree with the group in trying to come up with something to fulfill the legislation and the larger group. We must consider the MOA as a package, don't want two processes.

C – At the first meeting, the USFWS talked about a process that was fair, open and inclusive. Asking the Committee to accept new members would allow everyone who has a voice and doesn't feel represented to feel represented. It would be a buy-in for an open process.

C – It would be good to remember the schedule. The Committee must be organized by the end of September and then meet once per month. Therefore, they will meet 3-4 times before the end of the year. That may give the new members time to work through the process.

Bob Shaw suggested that the group may want to make a motion to the Committee to add the new members. However, Anna announced that lunch was ready and gave directions for the subgroups to gather for a working lunch (ratepayers, search committee and MOA). The Committee did not meet.

Lunch

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Steering Committee

Robert Potts chaired the meeting at the request of Texas A&M. He introduced the Committee members (Myron Hess sat in for the Living Waters appointment); therefore, all Committee positions were represented (**Attachment C**).

Next, he reviewed the near-term timetable:

- September 30 – Committee organized
- October 31 – hire a Program Director
- December 31 – appoint the science subcommittee
- December 31 – sign MOA
- January 1 – the Authority makes a report to the Legislature
- After the MOA is signed, the Committee can add new members

Program Manager

The status of the Program Manager was discussed. The search committee is Bob Shaw, Robert Potts, Calvin Finch, Con Mims, Dianne Wassenich, Andy Sansom, Bill West, and Gene Richardson. Bob Shaw reported that there have been 10 application inquiries and four complete applications. The search committee will review, rank and present recommendations to the Committee. Interviews will be scheduled with the Committee and the search committee. The announcement closes the end of September.

Q – Have the applications been graded?

A – No, they haven't been reviewed; that will occur after closing.

The burden of funding is on the Authority, TCEQ, TWDB, TDA, TPWD, GBRA, SAWS & SARA and each has been asked to contribute \$25,000 to start off. The Authority, SAWS and GBRA have committed. SARA will consider the matter at their September board meeting. TCEQ received an approval letter today (September 6). There has been no word from the TWDB, TDA & TPWD. Also, the following parties have committed \$5,000 – CPS, Nueces River Authority, Bexar Met., Bexar County, Victoria and New Braunfels/San Marcos. TCEQ asked when the funds are needed and to whom should they be sent. The response was that depends on who is selected as the Program Manager. Texas A&M has taken the lead and volunteered to hire the Program Manager; however, they can work through another agency. There might be need to create a 501 c(3) agency to hold the funds.

Q – What about costs to defray and interviewee's expense?

A – Possibly a Committee member could cover the expenses and deduct those costs from their contribution.

Q – Is the applicant list available for the large group?

A – A&M's policy is that only the list of finalists given to the Committee is public.

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The applications will be in by the end of the month and the search committee will review the applications the first week of October and try to get a list of two to five finalists ready for the October 18 meeting. The finalists will address the large group on October 18 and then will have a private interview at the Authority's office with the Committee on October 19 that will not be open to the public. The meeting on October 19 will be posted as an action item. Texas A&M will prepare an evaluation form that can be used by the larger group on October 18 and then collected and reviewed by the Committee.

Science Subcommittee

Robert reviewed the requirements in Article 12, SB3 for the science subcommittee (**Attachment D**). The science subcommittee is important and controversial and the Committee should start working on lists.

C – Texas Wildlife Association handed out a list of recommended members of the science subcommittee (**Attachment E**).

C – What about funding for the subcommittee, it might need to consider additional research.

Q – Any thoughts on the overlap of the science subcommittee and the work of the USFWS?

A – There appears to be overlap, the USFWS process will be helpful.

Q – What is the timeline for the USFWS overview?

A – The permit cap modeling analysis will be completed in a couple of months.

C – The MOA discusses a decision-making process; therefore, the selection of the science subcommittee is important.

Q – What assistance shall the Bureau of Economic Geology and the Texas Rivers Institute provide?

A – Don't know.

C – Because of the importance of the science subcommittee, their minutes need to be on the website and the meetings need to be open to the public.

MOA

Finished the discussion on new members, however, the group still needs to discuss decision-making.

C – One thing not in the MOA is federal non-voting members.

The MOA envisions two levels of decision-making and Tier 1 (5.2.3. a-i). Tier 1 decisions require a three-step process. First, reaching consensus is attempted. If that is not achieved, a smaller group of unspecified number and make-up will try to resolve the matter. If that too fails, the Committee will proceed to vote and the MOA committee recommended that a super majority be required. The MOA committee thought the approval percent should be between 67 and 79; however, did not agree to a specific number. Jerry James indicated this is similar to the city process and the size and time of deliberation of the smaller group is a function of the issue. Buck Benson stated this is similar to the local government code that requires a 75% super majority on land use issues. Con Mims discussed some of the issues Region L faced regarding super majority.

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Robert said there appeared to be support for a super majority, just need to decide on a number. SAWS, CPS, Bexar County recommended two-thirds. NBU supported that number since the MOA envisions two steps before a vote is required. Texas Living Waters, Trinity University recommended a higher percentage (the RIP has been set up by the Legislation and we need to show the Legislature we are working hard at consensus).

C – The legislation spells out voting percentages?

Q – What about other RIP voting percentages?

A – Other RIPs had problems and evolved over time.

C – Therefore, it is important to formalize an alternate list process.

Robert said there appears to be support for two-thirds and seventy-five percent and asked the entire group for a show of hands. Seventy-five percent was supported by more than seventy-five percent of the membership.

Miscellaneous

Q – Who are the signatories to the MOA?

A – At least the Authority, the four state agencies and the USFWS.

Agenda items for the October 18 meeting

- Program Director/Leader interview
- Science subcommittee
- MOA
- Discussion of a by-law process
- Discussion of an interim Committee chair

Buck Benson volunteered to lead a working group to develop guidelines and criteria for the science subcommittee membership selection.

The Authority will provide a list of research that has been done on the Edwards Aquifer or species. Melani Howard, a member of the Biologic Advisory Team (BAT) for the Authority's HCP, indicated the BAT sent a letter pointing out information gaps to the Authority.

The October 18 meeting will be at GBRA and, at that meeting, meals will be provided to attendees for \$10 per person (RSVPs are required). The November 8 meeting will also be at GBRA. Meetings will be on the second Thursday of the month.

Provide bulleted comments (not track changes) to Anna on the MOA by Friday, September 14.

Texas A&M will provide a day-long training for new Committee members on November 7 to provide historical background on the process and information about collaborative learning.

Name tags with affiliation will be available at the next meeting.