

Groundwater Management Area #1 Meeting

Minutes

March 13, 2009

The Groundwater Management Area Number 1 (GMA #1) Joint Planning Committee met on Friday, March 13, 2009 at 1:30 p.m. in the Ed Davis Conference Room – 9th Floor of the Chase Tower, 600 S. Tyler, Amarillo, Texas with the following members in attendance:

Voting Members Present:

John R. Spearman, Panhandle Groundwater Conservation District; Bob Zimmer sitting in for Daniel Krienke, North Plains Groundwater Conservation District; Jim Conkwright, High Plains Underground Water Conservation District; Jim Haley, Hemphill County Underground Water Conservation District.

Other Groundwater Management Area 1 Representatives Present:

C.E. Williams, Panhandle Groundwater Conservation District; Steve Walthour, North Plains Groundwater Conservation District; Janet Guthrie, Hemphill County Underground Water Conservation District; Robert Meyer, High Plains Water District

Others present:

Wilbur Killebrew	Killebrew Ranch
Don McReynolds	HPUWCD #1
Ray Brady	HPR Partners
Bruce Rigler	HPUWCD #1
Judith Jones	TMN - LWV
Steve Stevens	MRSA
John Duke	Duke Ranch
Bob Harden	R. W. Harden & Associates
Jenny S. Clark	JSW Consulting LLC.
Steve Stevens	Mesa Water
Dale Hallmark	NPGCD
Steven Miller	City of Amarillo
Kyle Black	Village of Timbercreek Canyon
Marty Jones	Sprouse Law Firm
Beth Sturgeon	HCUWCD
Alan Abraham	League of Women Voters
Kevin Welch	Globe-News
Pauline D. Robertson	LWV
Emmett Autrey	City of Amarillo
Charles Bowers	PGWD
Cindy Cockerham	Senator Seliger's Office
Gene Born	NPGWCD
Joyce Hensley	LWV

Judith Periman	Amarillo, TX
Ben Weinheimer	Amarillo, TX TCFA
Mina F. Johnson	Amarillo, TX
Billy Crawford	PGWD
Robert Bradley	TWDB
Kyle Ingham	LGS Director, PRPC
Scott Caldwell	LGS Coordinator, PRPC
Jonathan Ellis	LGS Intern, PRPC
Jim Copeland	
Melvin Walse	
Bill Mullican	
1 indeterminable guest	

1. The meeting was called to order at 1:37 p.m. with Vice Chairman Conkwright presiding.
2. Roll Call and Introductions were made. Vice Chairman Conkwright for the benefit of the public asked the members to identify themselves. All members were present except Daniel Krienke, whose district was being represented by Bob Zimmer who had been given voting power. Mr. Conkwright made note that a quorum was present
3. **Discuss and consider the minutes from February 20, 2009 GMA #1 Meeting.**

Mr. Conkwright asked for a motion of approval. Mr. Haley made a motion to approve the minutes as presented. Mr. Spearman seconded the motion; the motion carried by unanimous vote.

4. **Public Comment – Any citizens may address the GMA #1.**

Public Comment Cards were passed out, and filled as needed.

1) The first comment was a question from Judith Jones, a private citizen of Randall County. Ms. Jones asked how the GMA #1 receives input from people not in a water district?

Mr. Conkwright answered that they would received such input by a person being at the GMA meetings, or writing to GMA #1 via Kyle Ingham at PRPC.

2) Alan Abraham, an Amarillo citizen and stakeholder in the Ogallala, was representing the League of Women Voters. Mr. Abraham commented on the 50/50 portions of the proposed DFC saying such a condition could hardly be claimed as “management” of a finite resource. Mr. Abraham said such a stance might be barely be considered “damage control,” when speaking of a resource so vital to life. Mr. Abraham commented that the Panhandle portion of the Ogallala is a bathtub which slopes to the east, indicating that the western portions would run out first and he indicated this is what happened to New Mexico. Mr. Abraham said that the Ogallala is a mined resource, Mr. Abraham expressed concern that this situation represented economic competition between user which can be described as a “race to the bottom of the barrel.” He emphasized again his disagreement that a 50/50 condition in the DFC represented “management.” Mr. Abraham offered several suggestions for a more comprehensive management plan: 1) No exempted land areas on top of panhandle aquifers. 2) Meters at every well. 3) Collect real-time statistics on all water

users. 4) Adopt conservation protocols for city users. 5) Adopt conservation protocols for agribusinesses. 5) Educate city and municipal leaders to stop deification of growth and impress concerns of living in an arid land. 6) Turn the spigot down to real-life sustainability.

3) Mina Johnson, another representative of the League of Women Voters. spoke on behalf of another LWV member who could not be there: Tanya Kleuskens. Ms. Johnson spoke to Ms. Kleuskens's experience and research in the field and presented several of Ms. Kleusken's points: Current water policy was developed due to perception as "water as a commodity" mentality i.e. subject to the laws of property rights as is the case with minerals, Ms. Johnson disagrees with this outlook. Ms. Johnson said we must consider the broader view. Ms. Johnson indicated that many people have lived and prospered without oil, gas, and/or gold. But no one has found a way to live without water.

4) Joyce Hinsley, another representative of the League of Women Voters. Ms. Hinsley said that LWV is currently in the midst of a two year water study. Ms. Hinsley made comment that for their study they needed new sources of information and so she asked each committee member to submit written answers to each of the LWV written questions so as to aid theirs study. Ms. Hinsley did not go over each written question but sought to highlight several: 1) What are the water conservation districts doing to educate the general public about issues? 2) Sharing the concern of Mr. Abraham, Ms. Hinsley expressed concern about the trend of cities to push for more growth in the midst of a shrinking water supply, and asked what will you do when the Ogallala is no longer viable? 3) When you use the term "sustainability," what exactly do you mean by it? 4) Is it morally and ethically justifiable for individuals and companies to enrich themselves by exploiting a resource without which no type of life can exist?

5) Jenny S. Clark, made comment that she did not represent anyone, she was speaking as a citizen of Amarillo but that she had been asked to be on a city board regarding "greening." Ms. Clark had two questions: 1) Texas water conservation program funding is soon to be up. When funding is used up what's next? 2) What is the board doing as far as groundwater and surface water management coordination?

6) Wilbur Killebrew, of the Killebrew Ranch in Pampa. Mr. Killebrew commented that the current focus in water planning tends to be on consumption i.e. how much is left, not how much we are cutting down, Mr. Killebrew expressed concern about emphasis on drainage at a district basis. Mr. Killebrew believes that views should shift to areas within districts. He believes the overall view should be to examine drainage at a more specific level. Mr. Killebrew believes the focus should shift to conservation. Mr. Killebrew said he understands that the second largest consumer of water in the Panhandle is golf courses, and if true this is a concern. He asks what we will do when the water is gone.

There were no more comments. Mr. Conkwright asked the members how they thought it best to answer those who had questions. Mr. Walthour suggested since the majority of questions were written down, to have copies sent out to each district and each district develop answers to each to be presented at the next meeting. Mr. Ingham spoke to the concern of groundwater and surface water coordination; he spoke about

the cooperation between the Panhandle Water Planning Group and the Groundwater Management Area #1 group. Mr. Ingham directed audience members to the PWPG website for additional information www.panhandlegroundwater.com. Mr. Ingham spoke to their responsibilities being discussion of surface water, municipal usage, etc. Additionally he said that their website has the regional water plan which is developed every five years. Mr. Conkwright spoke about other members of the PWPG and directed audience members to www.hpwd.com for additionally information on the High Plains Water District. Mr. Williams agreed with Mr. Walthour and said he believed that each district should answer questions individually. Mr. Williams also spoke to the fact that the proposed DFC is “not the whole story,” and directed audience members to www.pgcd.us for additional information. Ms. Guthrie added that her board would be happy to speak to each concern. Ms. Guthrie said that their district website was currently down but invited audience members to call for any information.

5. Discuss and consider action as may be necessary in regard to technical information provided by TWDB Staff including additional Groundwater Availability Model Runs.

Mr. Conkwright asked Robert Bradley from the Texas Water Development Board if he had any additional information or issues from TWDB. Mr. Bradley referred to the supplemental included in the member packets on how Richard Smith came up with 80% remaining in 50 years for Hemphill rather than 90%. Mr. Ingham said he would make available to anyone the GAM 09-001 or the supplemental should anyone need it. Mr. Conkwright asked for comments on GAM run 09-001 and 09-001 supplemental. Mr. Conkwright clarified the purpose of the supplement as to change the 90% in division 2 to 80%. Mr. Bradley directed audience members to www.twdb.state.tx.us/groundwater for access to GAMs.

6. Discuss and consider action as may be necessary in regard to a Desired Future Condition of the Ogallala Aquifer in GMA #1.

Mr. Ingham explained the various resolutions before the committee; he identified the Panhandle, Highplains, and Hemphill versions of wording of the DFC. Mr. Ingham and Mr. Conkwright both addressed an issue which was the source for some differences between versions, both expected it to come up in discussion. Mr. Conkwright made the comment that each individual board had considered resolutions accepting whichever DFC the GMA decided to adopt. Mr. Conkwright said that the resolutions before them were the result of months of discussion between the districts. Mr. Conkwright also explained that in the last week before this meeting the committee had been made aware there is a half-section of land in the Hemphill County that is in two districts which has just recently become a point of conflict. Mr. Spearman explained that there had been consensus on the resolution until the discovery of 390 acres of his district, the owner of which in 1994 petitioned to join his district (PGWD). It was accepted into PGWD in 1994. Mr. Spearman stated that this was an oversight which was not caught when Hemphill County Underground Water Conservation District was being set up. Mr. Spearman said that since this discovery impacts the DFC he sought to clarify the wording in the adopted DFC so that it provided for this exception, something to the affect of “50% volume in storage remaining in 50 years in Hansford, Ochiltree, Lipscomb, Hutchinson, Roberts,

Oldham, Potter, Carson, Gray, Wheeler, Randall, Armstrong, and Donley Counties; and the portions of PGWD in Hemphill County” and then for the portion of Hemphill’s condition have a caveat, something to the affect of “80% volume in storage remaining in 50 years in Hemphill County, not covered by PGWD.” Mr. Spearman made comment that the PGWD wording could provide for whichever outcome the Attorney General’s Office’s actions result in i.e. the 390 acres being included in either Hemphill or PGWD. Mr. Spearman made comment that it would be unfair for the landowner to be under two districts. Mr. Williams pointed out that the taxes had been paid to PGWD since 1994 and that Hemphill wasn’t certified before 1997. Mr. Williams said that the land owner considered himself a part of PGWD, and that they had the same view. Mr. Williams said that there was a letter from TCEQ which said that the land goes to Hemphill, Mr. Williams asked what backup documentation they had to say why this track of land had to be in Hemphill, from his research he came to conclude that there was none, he called the TCEQ letter to be a bureaucrats opinion and nothing more. Mr. Williams brought up the idea of an inter-local agreement to resolve the issue at some point after the DFC had been passed. Mr. Haley believes that this dispute should not matter here, since it does not impact the other districts. Mr. Haley pointed out that this wording should not be included and that his board members have adamantly opposed the PGWD wording. Mr. Haley commented that the DFC as they had agreed upon last meeting to take to their districts would be acceptable even with this dispute and that the dispute could be resolved outside of the DFC. Mr. Haley made the comment that his board is adamant about not accepting PGWD DFC language and they are not ceding one more acre to “the bottom of the barrel.” Ms. Guthrie made comment that this issue had been addressed in 2001 where the TNRCC had sent a letter to the land owner and the owner had come to the Hemphill board. Ms. Guthrie said at one point the land owner sought to leave Hemphill but that he had then changed his mind one month after he sought action in 2001, and was agreeing to remain a part of the Hemphill district. Ms. Guthrie said that the de-annexation then as a result died for lack of action. Ms. Guthrie cited the enabling legislation for their district that the borders of the district should be along the county lines. Furthermore she cited their enabling legislation power section: “This...act shall prevail over any provisions of general law which is in conflict or inconsistent with this act.” Ms. Guthrie says that if there is a conflict their enabling legislation should take precedence. Mr. Haley further pointed out that the 390 acres could meet PGWD DFC conditions by meeting Hemphill DFC conditions. Mr. Williams and Ms. Guthrie spoke about the conditions or lack there of governing the action of de-annexing a track of land from Hemphill to PGWD or vice versa and coordinating such an action between boards. Mr. Williams and Ms. Guthrie then spoke about the possibility of letting the matter be decided by the AG and resultant AG agreement. Mr. Williams pointed out that his proposed wording would be consistent with whatever outcome an AG path would result in. Ms. Guthrie said that this is premature action, saying that until the AG action this wording was conceding land to 50/50 rule which would be inconsistent with the goals of desires of the Hemphill board. Mr. Ingham asked Mr. Bradley if this had happened elsewhere. Mr. Bradley said that there were plenty of overlapping districts, he offered the example of Plumb creek/Market springs. Mr. Bradley said that the two districts had agreed to the conditions of the overlap. Mr. Williams brought up and spoke about two other examples: Rayburn and Glasscock counties and Jeff Davis and Brewster Presidio

counties. Mr. Zimmer commented that all came here today expecting to pass a DFC. Mr. Zimmer said would it be possible to change wording so that "Hemphill county as defined by district lines," to make palpable the DFC. Mr. Zimmer pointed out that both parties seemed willing to allow for AG action to settle the matter, and asked for the focus of the group to then be on establishing wording which was acceptable by both parties and would account for whatever AG outcome happened. Mr. Conkwright asked what would make the wording in paragraph two agreeable to both parties. Ms. Guthrie said that the language which was sent to the districts in last meeting would be agreeable. She did concede that if the PGWD proposed wording for the third bullet were taken out that might be acceptable because that would make the land subject to both DFCs pending an AG agreement as opposed to now it as a ceding of land by Hemphill. Marty Jones of the Sprouse Law Firm and a member of the audience asked to be recognized. Mr. Jones said that Doyle Smith the owner of the land in question sold a portion to his client. Mr. Jones said that as such they have a stake in this process and that they object to being in two water districts. He said that they want to be in the Panhandle district and not want to be in Hemphill. Mr. Haley asked for the record why Mr. Jones did not want to be subject to different DFC. Mr. Jones replied that this would not be a problem if the district had agreed on a 50/50 standard as they should since this is one subdivision of the aquifer. Mr. Ingham asked if there is a way to word this to leave it up to AG opinion on those 390 acres. Mr. Spearman said he believes that the PWGD wording does that. Mr. Haley asked what would be the problem with moving forward with the wording from the last meeting, which would still be subject to the AG opinion. Mr. Spearman said that they are doing this so they don't have to amend the DFC in a few weeks. Mr. Williams said that if we retain former wording then it is disregarding the wishes of the land owner. Mr. Conkwright asked if Mr. Smith was here today. Mr. Williams said he was not, but that Mr. Smith had made his wishes clear to his board (PWGD) the morning of this meeting. Ms. Guthrie said she believed Mr. Smith had made his wishes clear in 1991, and she went on to say that the two district boards should meet in an open meeting. Ms. Guthrie expressed that the wishes of her board were that this should be settled between boards and not be debated in the GMA JPC so as to not cloud the issue of a DFC with this conflict. Mr. Williams pointed to agreements in 1991 that had the track of land in PGCD and that it should stay until something said otherwise. Ms. Guthrie said that their enabling legislation said otherwise, and since in the legislation it is directed to overrule any conflicting law then the track should be in Hemphill. Ms. Guthrie made comment that if Mr. Williams sees a conflict then it is clear that the issue should go to Hemphill due to the wording in their enabling legislation. Mr. Williams said he respectfully disagrees. Mr. Conkwright and Mr. Zimmer both asked if there was any possibility in trying to set wording today. Mr. Conkwright made comment that if the issue was left up to the AG it was his understanding that it might take up to six months to resolve. Mr. Conkwright asked if the body could set this aside and set a DFC for the rest of the GMA with wording pending an AG opinion on these 390 acres and both parties abiding by whatever that AG opinion might be, if that might be done today. Alternatively Mr. Conkwright suggested waiting 30 days for the districts to work this out among themselves. Mr. Ingham made comment that if the group waits 30 days he feels strongly that the DFC will not end up in the 2011 regional water plan. Mr. Ingham suggested the following wording as an alternative for the 2nd paragraph: "and any portions of Hemphill County deemed to be outside of district

lines.” And for the 3rd: “as defined by district boundaries.” Mr. Ingham said this could provide for whatever the outcome of the AG consultation would be. Charles Bowers, a member of the audience asked to be recognized. Mr. Bowers believes that the group had lost sight of what they sought to do today. Mr. Bowers made the comment that as this is simply a five year projection; nothing would happen in the next five years that would affect that specific 390 acres. Mr. Bowers made note that the owner of the land who made the agreement in 1991 with PGWD was not the same as who owned it today. Mr. Bowers, while recognizing the importance of the dispute, encouraged the board to go forward today with the current language so that there would be an opportunity at a later time to work on an inter-local agreement rather than waiting for an action from the AG. Mr. Bowers made comment that the GMA has done a wonderful job of coming together and he asked the board to settle on the DFC language. Again he reiterated that nothing would happen in the next five years which would impact those 390 acres. Mr. Haley made comment that at some point it comes down to principle. Mr. Haley pointed to the fact that Hemphill had conceded from 90 to 80. And they had come to the meetings in good faith and now within one week this dispute comes up. Mr. Haley reiterated that the stance of his board was against the current wording. Mr. Williams made the comment that his district had made concessions as well. After some discussion between Mr. Haley and Mr. Williams, Mr. Haley suggested using the language which was agreed upon at the last meeting and then addressing the conflict outside of the DFC discussion. Mr. Williams said that the wording from the last meeting makes no reference to the conflict. Ms. Guthrie brought up the point that if the course of action which was to be pursued was an inter-local agreement then the DFC could go ahead with the wording from the last meeting. Ms. Guthrie spoke to some possible inter-local agreements that might happen which would satisfy both groups. Ms. Guthrie and Mr. Williams discussed several aspects which might affect both the ability to reach an agreement and an agreement itself should it happen. Mr. Williams said that the wording of the last meeting was not agreeable to the PGCD board. Mr. Williams said that the resolution of the last meeting was to send the wording back the boards for review and in review PGCD found a conflict. The discussion turned to the laws of each side of the conflict. Ms. Guthrie reemphasized the fact that their enabling legislation specifically states that if there is a conflict, their enabling legislation should take precedence. Mr. Williams made the point that it is to take precedence over general laws but the laws giving authority to both districts are special laws. Mr. Williams says that the difference between the two laws results in two special laws in conflict so that one does not automatically trump the other. Mr. Conkwright in an effort to move this matter to the AG recognized the fact that this wording is not at this time acceptable. Mr. Conkwright asked if there is any chance of accepting the wording Mr. Ingham suggested. Mr. Ingham typed out his suggestion for the boards benefit. Mr. Zimmer believes that Mr. Ingham’s wording gives enough room for both parties pending the AG decision. Mr. Conkwright called for a brief 10 minute recess for consideration. The meeting broke at 2:52 pm.

The board reconvened at 3:08 pm.

Mr. Conkwright asked for comments from the floor. Mr. Jones made the comment he believed Mr. Ingham’s wording “as defined by district boundaries” was muddy. Mr. Jones made it known that he prefers Mr. Williams language pending an AG decision.

Mr. Jones also reiterated the stance that the land should go to PGCD due to the fact that taxes have been paid to PGCD.

Mr. Conkwright asked if the two districts in questions had come to a consensus. Mr. Spearman made the comment that Hemphill has the same problem with language as he would as a member of PGCD if the roles were reversed. So he suggested time for Mr. Haley to go back and meeting with his board and seek what would be acceptable. Mr. Spearman asked for a 30 day tabling of the motion so that both districts may have time to discuss both within boards and between boards to come to a resolution.

Mr. Conkwright called for a motion to table item 6 until a time where the two boards may meet and come to an agreement on the matter.

Mr. Spearman made such a motion. Mr. Haley seconded.

Mr. Ingham again reiterated that with this delay this DFC will probably not be in the 2011 water plan. Mr. Conkwright clarified for the audience that meant that the old water plan would continue to be what was used. A member of the audience asked what that meant. Mr. Williams said that by using the old plan it would mean that across the Panhandle a 50/50 practice would be implemented. Mr. Walthour clarified that it was actually just a 1.25% decline rather than 50/50. Mr. Ingham clarified on why the time would prohibit the use of this DFC for the 2011 plan. He spoke to the fact that the DFC would need to be decided by today to be in the 2011 plan, since the original date of necessity was 12/30/08 and the next date of consequence in adopting a DFC is not until September of 2010.

Mr. Conkwright restated the motion: That item 6 be tabled for at least 30 days until these boards can meet and work on this issue. Mr. Conkwright asked for a roll call vote.

Mr. Spearman (Panhandle) – aye

Mr. Haley (Hemphill) – aye

Mr. Zimmer (North Plains) – aye

Mr. Conkwright (High Plains) – aye

The vote was unanimous in favor of tabling the item.

7. Discuss and Consider status of the Groundwater Availability Model requested for the Dockum Aquifer in the GMA #1 planning area.

Mr. Conkwright asked Mr. Bradley if there was any new news. Mr. Bradley said he had no news on it. Mr. Conkwright clarified for the audience that the Ogallala was the priority as far as setting a DFC, and the Dockum was secondary.

8. Discuss other business and any future agenda items.

No items were explicitly stated under this item.

Mr. Conkwright thanked everyone for being in attendance. He invited the audience to contact any of the districts or the PRPC for any information

Mr. Conkwright made note that the next meeting would be posted in the same manner as this one.

9. Establish the date and location for the next meeting.

Mr. Conkwright made known that the GMA date would be set at a later date after the boards got together and discussed their calendars.

Mr. Ingham made it known that the Panhandle Water Planning Group Region A meeting was set tentatively for April 30, 2009. Mr. Conkwright commented that often there is a PWPG meeting in the morning and GMA in the afternoon but that is not set, just something to keep in mind.

10. There being no further business to come before the Board, Mr. Conkwright declared the meeting adjourned at 3:18 p.m.