

Groundwater Management Area #1 Meeting
Minutes
September 22, 2009 – 10:30 AM

The Groundwater Management Area Number 1 (GMA #1) Joint Planning Committee (JPC) met on Tuesday, September 22, 2009 in the PRPC Board Room – 1st Floor of the Panhandle Regional Planning Commission, 415 W. Eight Ave., Amarillo, Texas with the following members in attendance:

Voting Members Present:

John R. Spearman, Panhandle Groundwater Conservation District; 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; Bruce Rigler, High Plains Water District

Others present:

Jonathan Ellis	PRPC
D. Scott Caldwell	PRPC
Robert Bradley	TWDB
George W. Arington	Cjm-april@att.net
Ed Culver	Cjm-ed@att.net
Kent Satterwhite	CRMWA ksatterwhite@crmwa.com
Wilbur Killebrew	Killebrew Ranch wkillebrew@att.net
Sarah Crina	
Kirk Welch	welchk@npwd.org
Dale Hallmark	NPGCD hallmark@npwd.org
Steve Stevens	Mesa Water
Marty Jones	Mesa Water
Don McReynolds	HPUWCD #1
Gene Born	NPGCD
Vernon Cook	Roberts County
Joyce Hinsley	Amarillo LWV
Alan Abraham	LWV
Laurie E. Brawn	Canadian, TX (The Record)
Bob Zimmer	North Plains GCD
Keith Bord	North Plains GCD
David Landis	City of Perryton
Lori Williams	North Plains
Suzanne Schwartz	Center for Public Policy Dispute Res.
Bill Hutchinson	TWDB
Gary McLaren	Phillips of McLaren, LLP
John C. Williams	CRMWA – Ret.

1. The meeting was called to order at 10:30 a.m. with Chairman Krienke presiding.
2. **Public Comment – Any citizens may address the GMA#1.**

There being no public comments, Chairman Krienke closed the public comment period.
3. **Discuss and consider – The minutes from July 7, 2009 PM GMA #1 Meeting.**

Mr. Conkwright made a motion to accept the minutes as mailed. Mr. Spearman seconded the motion; the motion carried by unanimous vote.
4. **Roll Call –** Chairman Krienke asked for the minutes to reflect that all voting delegates were present and that there was a quorum.
5. **Discussion and consider – Action as may be necessary in regard to technical information provided by TWDB Staff including additional Groundwater Availability Model Runs.**

Chairman Krienke stated that there aren't any runs that anyone is working on at this time. Chairman Krienke asked for Bill Hutchinson and Ken Peterson to introduce themselves. Mr. Hutchinson spoke to his previous experience, education, and experience with the Texas Water Development Board. Mr. Peterson did the same. Chairman Krienke asked Mr. Hutchinson to give an update on the Dockum model run for the purposes of discussion before getting into the DFC matter.

Mr. Hutchinson began by stating that the Ogallala model was separate from the Dockum model. The Ogallala model does not communicate any water into the Dockum but a major part of the Dockum model is the inflow from the Ogallala. The model was developed by Intera. Mr. Hutchinson presented some high points about the structure and formation of the two aquifers. It became apparent that there was a problem with the model in terms of putting it as a future run. Mr. Hutchinson said that this was due to interaction with the Ogallala. Mr. Hutchinson made the comment that the problem is identified and they are simply trying to find how to correct it. Chairman Krienke asked about the impact of clay that in some places separates the two aquifers. Mr. Hutchinson acknowledged that there will be some interaction it is simply a problem of measuring how much interaction and quantifying the impact of it. Chairman Krienke asked about the certainty of the boundaries. Mr. Hutchinson responded that the lateral boundaries were fine but the vertical boundaries had an issue: as the Ogallala changes the Dockum could be affected. Chairman Krienke asked Mr. Hutchinson if the GMA #1 could help in anyway and expressed thanks to Mr. Hutchinson for his explanation. C.E. Williams had a question regarding the timeline of when the run would be completed and ready for use. Mr. Hutchinson said that January/February would be a safe estimate for when the Dockum run might be utilized. Chairman Krienke asked if—from a procedure standpoint—would having the Dockum DFC done before the Ogallala throw up a red flag with the GMA #1? Mr. Peterson did not think so. Mr. Hutchinson spoke to other areas which did their minor aquifers first and then their major later. Janet Guthrie asked if it was possible to use some other tool for the DFC other than the GAM. Mr. Hutchinson made comment

that there is no requirement to use the GAM at all or have contact with the TWDB as the DFC is developed. Mr. Hutchinson made comment however that there is no reason to look for another tool for expediency sake, given that the deadline for the DFC is still some time away. Mr. Hutchinson expressed optimism at the timeline for the Dockum run and his belief that it will be able to be reliably utilized by January or February. Ms. Guthrie asked if there was a time crunch would the group be able to move forward without waiting on the GAM run. Mr. Hutchinson and Chairman Krinke discussed about the timeline involved, workload of the TWDB, and the process of approving DFCs. Jim Conkwright expressed the position that Intera has the information and are capable of fixing the problem and finishing the project if they are given the time.

6. **Discussion and consider – Action as may be necessary in regard to legal and procedural information provided by TWDB Staff relating to processes regarding the petitions filed referencing the adopted Desired Future Condition for the Ogallala Aquifer in the GMA #1 planning area.**

Chairman Krinke asked Ken Peterson to explain how the petition process works. Mr. Peterson said that he would seek to explain the TWDB mindset to date on this process. Mr. Peterson provided a flowchart which he indicated was a reliable framework to the process. Mr. Peterson indicated that the legislature failed to impose a process for this. Mr. Peterson said that as this process relates to the GMA #1 the situation is currently not a contested legal proceeding. Mr. Peterson spoke at length about the timeline of the process and that the proposed DFC being adopted by the GMA #1 started the clock and that anyone seeking a petition for board review has one year to do so. The petition can be filed by anyone with a legally defined interest. Mr. Peterson made note that this can bring up two issues: 1) What constitutes a legally defined interest? Mr. Peterson spoke to this issue and stated that TWDB would know it when they see it. 2) The petition must be submitted to the GMA 30 days before it is submitted to the Board. Mr. Peterson spoke to where this time period fit in the overall time line and the purpose of the provision. Mr. Peterson made the comment that substantive issues which could be a point of challenge for a particular DFC must be specific to that DFC. Mr. Peterson spoke to the responsibilities of the Board after it receives the petition and their timeline. Mr. Peterson spoke to the mediation process and thanked the GMA #1 and all those present here, because to his understanding the mediation process was being pursued at this time. Mr. Peterson spoke to the 60 day time period in which a resolution could be preliminarily sought. Mr. Peterson spoke to the process by which the Board would review the DFC for reasonableness including: the process by which arguments were presented; timelines involved; the need for a court reporter; admissible evidence; sworn testimony; a period after the hearing in which additional information may be submitted, etc.

Mr. Peterson said that there are two results of the hearing. If the DFC is determined reasonable it is the end of story. If the DFC is determined to be unreasonable then the GCDs would prepare and submit a revised DFC to the Board and in doing so may consult with the Board on the reasons for a finding of unreasonableness of the previous DFC in order to address it. The GCDs would then seek to develop another

DFC. This would entail another public hearing; an opportunity for public comment; and an opportunity to respond to the public comment.

Mr. Peterson spoke to the occurrence of if during the 60 day period an agreed upon alternative is developed. This outcome ends the process. Steve Walthour asked if the DFC is found reasonable and a new petition is filed is there a new time period begun. Mr. Peterson answered in the negative, he indicated that the clock for all petitions began when the proposed DFC was adopted, however he did indicate that the petitions may be consolidated. C.E. Williams, Kyle Ingham, and Mr. Peterson discussed points of clarification regarding the subject matter of subsequent petitions within the time period. Chairman Krienke asked about a waiver to the 60 day mediation period in order to extend the time. Mr. Peterson indicated that a waiver is possible, due to the fact that the Board and the administrative staff would prefer to see a solution worked out prior to a contested hearing. Mr. Williams had a question about a mentioned "120 day period." Mr. Peterson indicated that the 120 days comes after the 60 day mediation period so that the total period involved was 180 days. Any extension or waiver would be apart of the following 120 day count down.

Mr. Peterson indicated that the Board is required to make their decision solely on the evidence produced at the hearing: testimony evidence at the hearing and the evidentiary record. Some of the considerations of administrative completeness include: the physical possibility of the DFC; the socioeconomic impact; environmental impacts; impact on private property rights; any other matters determined germane, etc.

Mr. Conkwright asked a question about the hearings following a determination of unreasonableness: would each district hold a hearing or would it be together as the GMA #1? Mr. Hutchinson made the comment that many of the actions taken after the hearing and a finding of unreasonableness depend on the recommendation of the Board for there to then be a finding of reasonableness. Mr. Ingham asked a question about the GMA #1 designating a representative to speak for all four water conservation districts. Mr. Peterson said that is possible. Chairman Krienke asked if he understood correctly that on the equal time issue the petitioners are cumulative and the responders are cumulative. Mr. Peterson indicated yes. Chairman Krienke asked for any further questions. Mr. Peterson made the observation that if the GMA negotiates a settlement it is required to be in an open meeting. Mr. Peterson then spoke to several points of clarity for the utilization of executive session and open meeting requirements in this process. Mr. Williams asked for Mr. Peterson to verify that if there were no voting members present in a meeting then there would be no requirement of an open meeting. Mr. Peterson said that in that case there would be no meeting of GMA so that is correct. Mr. Walthour made the point that the only time the GMA council could go into executive session was pending litigation not possible litigation. Mr. Peterson indicated that the GMA is a political subdivision of the state of Texas and if he were counsel, he would advise not going into executive session since litigation was not pending or threatened.

7. Discussion and consider – Action as may be necessary in regard to a Desired Future Condition of the Dockum Aquifer in GMA #1.

Chairman Krienke reiterated the information Mr. Hutchinson had given earlier. Steve Walthour asked one question: If for some reason the current Dockum model is not working by January or February would it be anticipated that the GMA #1 revert to a spreadsheet like process? Again Mr. Hutchinson reiterated that there is time left in the process but if no progress has been made then he indicated yes. John Spearman moved to table the motion. Jim Conkwright seconded, motion carried by unanimous vote.

8. Discussion and consider – TWDB correspondence accepting to administrative completely the Ogallala Aquifer in GMA #1 Desired Future Conditions submission.

Chairman Krienke indicated that there was a copy of the TWDB letter which acknowledged administrative completeness. Mr. Ingham indicated that all the districts had a copy of this letter.

9. Discussion and consider – G&J Ranch, Inc.’s petition submission to TWDB relating to the Desired Future Condition of the Ogallala’s Aquifer in the GMA #1 planning area.

AND

10. Discussion and consider – Mesa Water LP’s petition submission to TWDB relating to the Desired Future Condition of the Ogallala’s Aquifer in the GMA #1 planning area.

Chairman Krienke spoke of possibly combined these two agenda items. He asked Marty Jones if that was objectionable. Mr. Jones replied in the negative and indicated that he was willing to speak for both petitioner parties. Chairman Krienke introduced Suzanne Schwartz, Environmental Program Director, of the Center for Public Policy Dispute Resolution at the University of Texas at Austin. Furthermore Chairman Krienke invited Suzanne to describe the mediation process and give some background information. Ms. Schwartz spoke to the history and purpose of the Center and her experience there. Ms. Schwartz spoke to the interest-based approach which is normally utilized in situations such as these and that the first step is to determine what is important to the parties involved. Ms. Schwartz also spoke to the concept of mediation and confidentiality. Ms. Schwartz through initial review believed that a consensus might be able to be reached. Ms. Schwartz further went on to describe preliminary concerns such as privacy agreements and determining a public or private setting, positives and negatives of each option were discussed. Furthermore certain points which applied due to the GMA being a political subdivision were examined i.e. open meeting requirements. Ms. Schwartz also spoke to concerns of time in determining either a public or private venue. Ms. Schwartz reiterated that the two primary questions right now are who sits at the table and are the discussions done in a public or private venue. Ms. Schwartz did not have a recommendation today.

Ms. Schwartz did indicate that she believed, after speaking to the districts and the petitioners, that this was something that could be resolved by negotiation. Ms.

Schwartz advocated that the negotiations be structured in such a way as to not get hung up on the science involved. Recognizing that some issues just need to be litigated, Ms. Schwartz did speak on issues of the binding nature of resolutions and that each party come to the table in good faith. Furthermore, Ms. Schwartz did say that even if the case did go to court, some good can come out of mediation in the form of narrowing the subject for instance. After concluding her summation, Ms. Schwartz asked if there were any questions.

Chairman Krienke asked if either the petitioners or the GMA #1 had a problem with it being confidential. Mr. Jones said the petitioners did not. Mr. Ingham spoke of the need to be cognizant of open meeting requirements. To that end Chairman Krienke understood that no open meeting requirements would be violated because the representatives would not constitute a quorum of this or any other board. Chairman Krienke acknowledged that this would result in no final decision by meeting but proposals might be reached. Mr. Jones made comment that he would be fine meeting in public as well. C.E. Williams alleged that in a private meeting all parties involved might be a little more open and it might facilitate a quicker reaching of a consensus. Chairman Krienke in order to dispel concerns of decision making behind closed doors, made the comment that anything reached in a private meeting would be a proposal only, subject to review by full boards and the full GMA #1 before finalization. Mr. Williams made the comment that for any negotiations to move forward would require a good faith effort by all parties concerned, i.e. each provision of any proposal cannot trigger an immediate consultation of a the individual district boards. Chairman Krienke made the recommendation that there be a spokesman for each district and perhaps two board members from each individual district board. Jim Haley expressed a desire to have all negotiations in the open. Janet Guthrie expressed a desire that she would not go to any meeting without a representative of the board. It was asked when the 60 day period ended. It was determined that the period began on September 3, 2009. Mr. Williams made the comment that the biggest problem here seems to be time. Chairman Krienke made the comment that their district held 7-8 town hall meetings and that Mesa was at each of them and provided comments. Chairman Krienke made the comment that they had heard nothing new over the course of those comments. Chairman Krienke concluded then that perhaps what is needed then is a closed meeting. Mr. Conkwright made the comment that up until now this matter was not pending litigation and in his view that made a big significance. Mr. Conkwright as a result favors a more open setting. Mr. Williams indicated there were two issues in his mind: 1) the issue of going into closed session with this board; 2) a subgroup of the districts are the primary concerns and if structured correctly a meeting of not the full board could accomplish what is needed. Jim Haley made comment that the GMA #1 had voted unanimously in support of the DFCs. He contended that matters of contention are matters of law and should be handled in a different venue than this GMA #1. Until those questions are resolved Mr. Haley put forward that he did not see that mediation could accomplish anything until those questions were answered. There was discussion on whether the focus should be on mediation between GMA #1 and petitioners or between the individual boards and GMA #1. Ms. Schwartz put forward that since the decision of the final body must be made as the GMA #1 it would be beneficial to somehow include in mediation representation from all districts involved. Ms. Guthrie had a concern of justifying any

decision made in private when the discussion is hidden by a confidentiality agreement. Ms. Shwartz made comment that the logic of the decision should be self-explanatory. In response to a comment made by Mr. Haley, Mr. Williams asked the Hemphill District if they are so entrenched as to believe no progress could be made through mediation. Mr. Haley indicated that they felt that the questions before them were questions of law and should not be answered here. Mr. Williams contended that the questions were ones of science. Ms. Schwartz asked the petitioners if the legal arguments presented are such that they cannot be relinquished? Or they might subject to a change in the DFC? Mr. Jones asked to indicate three things on behalf of the petitioners: 1) If three of the districts filed letters with the TWDB seeking 60 days for mediation in good faith we are willing to meet with them. 2) If there is no prospect of resolution, he would suggest that TWDB waive the process. 3) The position of the petitioners is unchanged and he would not feel uncomfortable stating it again here: We believe that the DFC for the aquifer and each subdivision of the aquifer should be the same across each subdivision. All those who are owners of Texas Groundwater should be treated equally. Mr. Jones indicated that if those options are satisfied then the legal issues do not have to be pursued. Ms. Schwartz made the comment that the group would need to explore if there was no other possible outcome than a single DFC. Mr. Jones indicated that his clients would be happy to have Ms. Schwartz's center and her personally be a mediator in this issue. Chairman Krinke asked Mr. Spearman his opinion. Citing Mr. Peterson, about this not being a contested case, Mr. Spearman indicated that it would be best done in public, as there are some legal questions. Chairman Krienke asked how this matter might be done as a public meeting. Mr. Williams asked about a recess until 2:00 so that groups might meet and deliberate. Before recess, Mr. Peterson asked for the record to indicate he did not say that a meeting of a quorum could not be pursued in executive session. Mr. Peterson said he would clarify some time milestones in the process and forward the information to the board once he got back to Austin. Mr. Spearman made a motion to recess until 2:00 pm. Mr. Conkwright seconded, motion passed by unanimous vote.

The Committee recessed at 12:29 pm.

The Committee reconvened at 2:20 pm.

Chairman Krienke attempted to start at the point that they have left off at, i.e. whether a public or private meeting would be a more appropriate venue for mediation. Chairman Krienke made the comment that he heard concerns which cause him to wonder if this is a good faith effort. He is concerned that some parties might be too far apart. Mr. Spearman continued his thought from earlier on the concerns of a private meeting, among them: allowing all four districts representation without constituting a quorum. Furthermore, considering Mr. Peterson's comment about this not being a contested case, Mr. Spearman spoke to how this mediation might be accomplished in an open meeting. He spoke to notices and simply making "mediation" an agenda item and allowing for public comment outside of that item. Mr. Walthour asked a question of clarification in which the confidentiality of any meeting could be ensured. Mr. Williams asked the petitions to state their preference or offer any comments after hearing the concerns of the districts. Mr. Jones indicated again a willingness to meet either in private or public, but he made the comment that

he would not advise for a private meeting since he was unfamiliar with open meeting provisions. Mr. Arrington made the comment that it would be ethical and professional for him to leave comments up to Mr. Jones. Mr. Arrington expressed a belief that GMA #1 could have done many things differently and expressed distaste at the bureaucratic process which the group was involved in. Furthermore, Mr. Arrington believes that all parties should “get down the road and settle.” He believes if there is no discrimination and fairness that the process can move forward but the process is holding up the parties. Chairman Krienke made the comment that he could say the same thing regarding reliance on legal counsel. Thus, his initial thought was that a private meeting could accomplish more. However, the legislation binds the process on some issues. Chairman Krienke made the comment that this is the reason for the delay. Mr. Williams thought it might be a good exercise to ask all participants if they are willing to go into mediation in good faith. As an example, Mr. Williams made the comment that they would be willing to change from their current regional DFC which is a 50/50 condition. Mr. Williams believes this exercise would help move the process forward. Mr. Haley made a motion to not go forward with mediation. Ms. Schwartz made comment that not all cases are appropriate for mediation and that currently having not done an in depth analysis of this case she was at somewhat of a loss to advise one way or another. Ms. Schwartz made the comment that sometimes you try it and just see where it goes. Mr. Haley’s motion died for lack of a second.

Mr. Conkwright expressed a desire to get back to Mr. William’s point about good faith. Mr. Conkwright indicated that the High Plains District would be prepared to go into mediation in good faith. He expressed that there is no need to spend time and money on a process in which we are unwilling to get some agreement up front that a solution is possible. Mr. Conkwright apologized but he asked the other two districts if they are willing to indicate good faith going into this or not. Ms. Schwartz asked if there were other measures besides the DFC which could be considered introduced in discussions as other measures which could be modified in order to reach consensus—this done in order to create a package type of agreement. Mr. Conkwright made the comment that the four districts on the Ogallala are basically the same. Mr. Conkwright suggested that perhaps a mutually agreed upon hydrologist be designated in order to settle some matters of science and measurement. This person would have to be accepted by all four districts and petitioners. Mr. Conkwright put this forward as an example of what Ms. Schwartz was suggesting. Ms. Schwartz indicated that a common science source might be useful. Mr. Ingham asked about the amount of discretion in determining how the DFC is measured. Mr. Williams indicated that there is a great deal. Mr. Williams made the comment that if all the parties, in good faith, examined all options of measurement that a consensus might be reached fairly quickly. Ms. Schwartz indicated that often these mediations are begun with the setting of a common goal. Mr. Spearman asked about alternative measures for the purpose of compromise. Mr. Williams indicated that he is not convinced that the group has looked at everything. Mr. Williams further made the comment that all involved want local control but that it is about to be lost if this process continues. Mr. Haley suggested that perhaps G&J, Mesa, and Hemphill meet first and try to seek consensus on some of the issues and then there be a larger meeting with the whole board. Mr. Jones indicated that they would meet with any party that was willing do to so in good faith. Ms. Schwartz asked if Hemphill believed the bulk of the contention could be

solved by such a meeting. Mr. Ingham clarified that as he understood, Hemphill believed that a meeting with just the petitioners and themselves might solve the primary issue in this situation, and then from that meeting a consensus by the group as a whole might be easier to reach. Ms. Guthrie didn't know if it would get that far but to express their good faith they would be willing to go into talks with G&J ranch and Mesa and then get back to the GMA #1. Mr. Conkwright expressed the belief that a meeting between Hemphill, Mesa, and G&J would take a large chunk out of the situation and that if those should meet and be unable to reach a consensus it would be a very good indicator on whether or not the GMA #1 on a whole would be able to reach consensus with the petitioners. Mr. Williams asked if that would be with or without Ms. Schwartz in that meeting, he expressed great confidence in her abilities and contribution to the meeting if she were there. Mr. Conkwright made a comment to Hemphill, that he believes this process would be better done in a closed session but openly being that all individuals involved are representatives of government bodies. Ms. Schwartz indicated having a contingency meeting in order to save time, with a meeting date outside of the result of the first meeting. Mr. Haley believes that since the bulk of the contention is with Hemphill, there should be a meeting with them first and then a report to the GMA #1. Mr. Williams put forward the idea that perhaps the GMA #1 have a meeting very soon after the Hemphill meeting. Mr. Walthour asked Mr. Jones if perhaps at 75 days into the process an acceptable resolution is discovered can the petition be dropped. Mr. Jones belief is that while the process would move forward, i.e. that is past the 60 day extension, like any other disputed matter resolution can be reached at any time. Mr. Spearman seconded Mr. Conkwright's stance, that there be a one-on-one meeting between Hemphill and the petitioners and then do what is necessary.

Chairman Krienke asked for guidance on setting possible meeting dates and perhaps not using them or responding to member requests for meetings as needed. It was determined that it would be easier to pencil in possible times and then cancel them as needed. October 8th at 10:30 was indicated as a possible GMA #1 meeting date for mediation with the whole GMA #1. Chairman Krienke indicated that there would be a public comment period and then one item on the agenda: the mediation. There was discussion of what a facility which hosted the mediation would require. Mr. Williams asked about how to contract with Ms. Schwartz. Ms. Schwartz indicated that there might be a need for a second date for the entire GMA #1 for mediation. It was determined that both the 7th and 8th of October were possible meeting days for the entire GMA #1 both at 10:30 am. Mr. Spearman made a motion to retain Ms. Schwartz at her contracted prices at an equal distribution between the petitioners and respondents. Mr. Conkwright seconded, motion passed by unanimous vote.

11. Adjourn.

Mr. Spearman made a motion to adjourn. Chairman Krienke seconded, motion passed by unanimous vote. Meeting adjourned at approximately 3:15 pm.