

Llano Estacado Regional Water Planning Group Meeting

September 18, 2014

10:00 a.m.

High Plains Underground Water Conservation District No. 1 Office
2930 Avenue Q, Lubbock TX

1. Call To Order and Welcome.

Chairman H. P. Brown Jr. called the meeting to order at 10:04 a.m. in the A. Wayne Wyatt Board Room of the High Plains Underground Water Conservation District No. 1 office, 2930 Avenue Q, Lubbock, Texas. Notice of the meeting was provided to each voting/non-voting member and was also filed/posted in accordance with the Texas Open Meetings Act at the following locations: *Office of Texas Secretary of State, Office of Lubbock County Clerk, Lubbock County Courthouse, Administrative Offices of the High Plains Underground Water Conservation District No. 1, the High Plains Water District web site at www.hpwd.com and the regional water planning group web site at www.llanoplan.org.*

2. Roll Call of Members and Establish Quorum.

The following Llano Estacado Water Planning Group members were in attendance: Bruce Blalack, H. P. Brown Jr., Jason Coleman, Harvey Everheart, Bill Harbin, Doug Hutcheson, Mark Kirkpatrick, Richard Leonard, Michael McClendon, Don McElroy, Dr. Ken Rainwater, Aubrey Spear, and John Taylor.

There was a quorum of the Llano Estacado Regional Water Planning Group members in attendance (*13 of 22 voting members or 59% attendance*).

Voting members unable to attend (excused absences): Voting members unable to attend today's meeting were: Dr. Melanie Barnes (out of town), Jack Campsey (medical appointment), Delmon Ellison Jr. (farming), Richard Gillespie (training), Ronnie Hopper (meeting conflict), Bob Josserand (previous engagement), Kent Satterwhite (out of state conference), and Jim Steiert (out of town).

Voting members unable to attend (unexcused absences): None.

Non-voting members in attendance: Non-voting members in attendance were Sarah Backhouse, Texas Water Development Board; John Clayton, Texas Parks and Wildlife Department; Amy Ewing, Daniel B. Stephens and Associates; and Malcolm Laing, Texas Commission on Environmental Quality.

Non-voting members unable to attend (excused absences): Matt Williams, Texas Department of Agriculture.

Others in attendance: J. Collier Adams, Jr., Lori Barnes, Ray Brady, J. O. Dawdy, Adeline Fox, Lindy Harris, Jay Keith, James Powell, Leland Stukey, Jimmy Wedel, and Kelly Young. *(These names were obtained from a sign-in sheet in the A. Wayne Wyatt Board Room.)*

Carmon McCain of the High Plains Water District staff served as recording secretary for the meeting. Elaine Fowler with Cathy Sosebee and Associates took the transcript.

3. Introduction of New Members and Guests.

Chairman Brown welcomed those in attendance and expressed gratitude for the recent rainfall.

Chairman Brown recognized Malcolm Laing, who is leaving the Texas Commission on Environmental Quality on September 30 to begin work with the City of Lubbock Water Utilities. Mr. Laing introduced Jay Keith, who will serve as the TCEQ non-voting member. Mr. Keith has been with the agency for about 14 years.

Chairman Brown welcomed Mr. Keith to the regional water planning group and thanked Mr. Laing for his years of dedicated service.

Chairman Brown informed the membership of Tom Fulton's resignation as manager of the White River Municipal Water District. Mr. Fulton resigned Sept. 17 to take a job with a community resource group closer to his home town of Longview. Mr. Fulton will no longer be eligible to serve as a water district representative due to his resignation as manager and his move from the area.

Chairman Brown reminded the group that there is a vacancy in the county government position that must be filled as soon as possible. This position became vacant due to the resignation of Lamb County Judge Mike DeLoach.

Chairman Brown introduced James L. ("Jimmy") Wedel of Bailey County, who is interested in serving as an agricultural representative. His appointment will be considered at the next LERWPG regular meeting. Mr. Wedel is an organic farmer who grows corn, cotton, wheat, and soybeans.

ACTION ITEMS:

4. Discuss and take possible action to approve the September 18, 2014 regular meeting minutes.

The draft minutes of the September 18, 2014 regular meeting were provided to the membership prior to today's meeting. There being no additions or corrections, a motion was made by Mr. Kirkpatrick and seconded by Mr. Taylor to approve the minutes as printed. All members voted "aye" and the motion was unanimously approved.

5. Discuss and take possible action to approve the financial report.

The financial report was provided to the membership prior to today's meeting. Mr. Hutchison reported a balance of \$93,239.67 as of August 4, 2014. A motion to accept the financial report as presented was made by Mr. Coleman and seconded by Mr. Everheart. All members voted "aye" and the financial report was unanimously approved as presented.

6. Hear a presentation from Kyle Ingham outlining funding and other administrative procedures relating to the Panhandle Water Planning Group ("Region A")

Mr. Ingham gave a brief overview of the Panhandle Regional Planning Commission (PRPC) and its duties relating to regional water planning.

After passage of Senate Bill 1, the newly-formed Panhandle Water Planning Group used PRPC as a meeting place. They asked PRPC to be the political subdivision for the group in 1997. This offers several advantages: a politically neutral entity serving as administrator; expertise in contract management; wide range of contacts; and experience with state agencies.

The PRPC solicits funding for regional water planning from local entities in the planning group area. The theory is that cities, counties, economic development corporations, water utilities, special supply corporations, and special districts all benefit from the water planning effort.

About 90 percent of the funding received from the TWDB is “passed-through” the administrator (such as the PRPC) to contractors and subcontractors. Since 2009, administrative costs incurred by the planning group administrator are no longer eligible for reimbursement by the TWDB.

Therefore, the PRPC receives funds used to cover administrative costs from various entities/groups as follows:

- Groundwater conservation districts (5) : 40% of total or \$31,636.
- Municipalities (49): 24% of total or \$18,982.
- Wholesale water providers (1): 18% of total or \$14,236.
- Counties (23): 6% of total or \$4,745.
- Water Utilities (45): 3% of total or \$2,373.
- Economic Development Corporations (21) 9% of total or \$7,118.
- Special billings (2): Flat fee (variable). Energy producer & manufacturing.

The PRPC bills entities for approximately \$79,000 annually—with around \$75,000 collected annually.

Mr. Ingham concluded his presentation by saying that water is probably the most important issue being faced by the cities, counties, and citizens served by the PRPC. He said he hopes the organization is an asset to the regional water planning group effort.

Chairman Brown asked if PRPC is similar to the South Plains Association of Governments (SPAG). Mr. Ingram said SPAG is their sister organization in the South Plains area.

Mr. Kelly Young, an audience member, asked about the role of the private groundwater owner in the regional water planning effort.

Mr. Ingham replied that the private groundwater owner is involved in the regional water planning effort as a result of state statute. He noted that the Region O membership is very similar to that of Region A. Agricultural groundwater owners are involved in the voting and decision-making level of the water planning group.

Mr. Young asked Mr. Ingham for an example of a private groundwater owner involved in Region A.

Mr. Ingham said Janet Tregellas is a farm/ranch representative for Region A. Dr. Bill Hallerberg is also a groundwater representative. Joe Baumgardner, Tonya Kleuskens, and Grady Skaggs all represent farming interests.

Mr. Young asked if these persons all owned groundwater. Mr. Ingham said that they did. In fact, he said they had very similar operations to Mr. Wedel, who is being considered for Region O membership.

Mr. Spear asked Ms. Backhouse if she knew the number of council of governments serving as the political subdivision for regional water planning groups in the state. She said there may be three RWPGs that do so. Each uses contribution of local funds.

Chairman Brown thanked Mr. Ingham for his presentation. Mr. Ingham has a PRPC Board Meeting this evening and left the meeting at this time.

7. Discuss and Take Possible Action to Approve Moving Funds Between Project Tasks 2A and 2B.

Ms. Ewing called the membership's attention to a letter from Daniel B. Stephens and Associates (DBS&A) to the High Plains Water District requesting a transfer of funds between two project tasks.

As noted in the letter, the Task 2A budget (Projected Non-Municipal Water Demands) was \$19,112.00 and the Task 2B budget (Projected Population and Municipal Water Demands) was \$6,009.00.

The original Task 2B budget was approximately one-third of the original Task 2A budget; however, Task 2B has required more effort than Task 2A. Therefore, DBS&A is requesting approval from the Region O regional water planning group to move the remaining Task 2A funds (\$7,625.82) into Task 2B, with the total project budget remaining unchanged. If this request is approved, the revised task budgets will be Task 2A, Projected Non-Municipal Water Demands, \$11,486.18 and Task 2B, Projection Population and Municipal Water Demands, \$13,634.82.

Ms. Ewing said this transfer of funds will not change the total budget of the project. She noted that there is an allowance of 35 percent over a task budget as long as it is made somewhere else by being under budget.

Ms. Backhouse said the TWDB has been in communication with DBS&A and HPWD. The transfer of funds can be handled through an informal budget memorandum.

There being no other questions or discussion, Mr. Kirkpatrick made a motion to approve the transfer of funds as requested between the two budget tasks as requested by DBS&A. Mr. Taylor seconded the motion. All voted "aye" and the motion was unanimously approved.

8. Discuss and Take Possible Action to Ratify the Technical Memorandum Submitted to the TWDB on August 1, 2014.

At the June 19, 2014 regular meeting, the LERWPG authorized the consultant (DBS&A) to submit the technical memorandum to the TWDB by the August 1 deadline. The tables in the DB 17 database were not ready on June 19; therefore, DBS&A entered data into the completed tables, sent them to the TWDB, and was given a revised table to replace the one in the earlier technical memorandum.

After discussion and questions, a motion was made by Harvey Everheart to ratify the technical memorandum as presented. Mr. McClendon seconded the motion. All voted “aye” and the motion was unanimously approved.

9. Discuss and Take Possible Action To Ratify The Final 2011 Prioritizations Submitted to the TWDB on August 18, 2014.

At the June 19, 2014 meeting, there was discussion about making the changes to the water project prioritization process recommended in the TWDB guidance document. The LERWPG isn't required follow the guidance document—but the subcommittee and consultant felt that the adhering to the guidance document would create a more accurate prioritization of projects. This allowed for some updated information since the 2011 plan was completed. The LERWPG authorized DBS&A to submit the draft prioritizations by the Sept. 1 deadline with the provision that they be ratified at this meeting. The prioritizations were submitted to the TWDB on August 18, 2014.

After discussion, a motion to ratify the final prioritization changes recommended by the subcommittee was made by Mr. Harbin and seconded by Mr. Kirkpatrick. All voted “aye” and the motion was unanimously approved.

Mr. Spear commented that the TWDB is asking the stakeholder group to reconvene in order to provide feedback on how the prioritization process worked for the 2011 plan. They are interested in knowing what types of recommended changes are needed to make it a better process for the 2016 prioritizations.

10. Discuss And Review The Draft Version Of Chapter 2 Of The 2016 Llano Estacado Regional Water Management Plan.

Ms. Ewing told the membership that the deadline for submitting the initially prepared plan (IPP) to the TWDB is May 1, 2015. In advance of that due date, DBS&A will have draft chapters of the plan for review/comment at future LERWPG meetings. This will allow the final document to be ready for turn-in by the deadline.

She presented a draft version of Chapter 2, which are the Population and Water Demand Projections.

Dr. Rainwater noted that there were a couple of “cut and paste” errors in some tables. They are labeled “population” where it should be labeled “demand.” Ms. Ewing said DBS&A will make a thorough review of the titles to make sure they are correct.

There was discussion on whether or not to have formal acceptance of each chapter at the meeting at which it is presented. Mr. Spear said there is a possibility that earlier chapters of the plan may need to be revised to correspond with information developed for later chapters in the plan. Because of this, it might be best to wait to complete the draft Initially Prepared Plan (IPP) and approve it at that time.

It was the consensus of the membership to defer accepting chapters of the plan until the IPP is completed. No action was taken on this agenda item.

11. Receive An Update On Chapter 7 Of The 2016 Llano Estacado Regional Water Management Plan And Discussion Of Drought Contingency Plans Received.

Ms. Ewing noted that Chapter 7 is a new topic included in the 2016 planning cycle. It will contain a detailed discussion of the drought contingency plans which are in place for many of the communities in the LERWPG area. It will also note the triggers and responses the communities have in response to drought.

She called the membership’s attention to a table in their meeting materials which lists all drought contingency plans received by the LERWPG. DBS&A collected some plans—but there are some not yet submitted. Parkhill, Smith & Cooper, Inc. works closely with some of the communities and is helping “fill in the gaps.”

Mr. Laing asked if the plans were being updated. Mr. Spear said the majority of the updated drought contingency plans were due to the state by May 1, 2014. This was done to let the regional water planning groups have the latest versions for planning purposes. There are a few “stragglers” that have until Jan. 1, 2015 to get their plans submitted.

Ms. Ewing said the City of Lubbock will have an updated plan which will be included in the plan. However, DBS&A is not planning to contact the entire list to try and get new information. If a town or city submits updated information, they will be more than glad to use the updated version.

Ms. Ewing noted that Section 7.7 of the regional water planning guidelines require development of at least two model drought contingency plans to be included in the 2016 Llano Estacado Regional Water Management Plan. She said one of these would be a municipal example and the other would be decided upon by the membership.

Ms. Backhouse said the TWDB guidance document indicates drought contingency plans can be developed based upon differing water user categories.

Mr. Spear said this information is intended to be used as a template that towns and cities could adopt, if so desired. Ms. Backhouse agreed. During the 2011 drought, it was found that many of the drought contingency plans adopted by towns and cities were not useful at all.

Mr. Laing said the TCEQ has written many violations lately for poor triggering mechanisms within drought contingency plans for unusable methods of determining when they needed to move from one level to another. He recommended that the local TCEQ office review any drought contingency template prior to adoption and inclusion in the Initially Prepared Plan. This would ensure that the template meets TCEQ requirements and avoids any potential regulatory problems.

Mr. Spear asked Ms. Backhouse what the TWDB is recommending for templates for those water users that are not municipalities or wholesale water suppliers. She said that it is up to the LERWPG to decide. She said she would like to see one template for each water user category in the plan—but the TWDB doesn't specify that in their water planning rules. They would just like to see two different categories. It is up to the group to decide which water users would benefit the most from such a template.

Dr. Rainwater expressed concern that there could be 16 different sets of templates from each of the regional water planning groups. This could result in a "traffic jam" during the approval process.

Mr. Laing suggests that the planning group develop a workable template for submission to the TCEQ. If approved, then the LERWPG could take a proactive approach and perhaps pass the template along to the other RWPGs for their use.

Mr. Spear noted that there needs to be a definite disclaimer in the plan saying that the triggers and other information contained in the template should be approved by the TCEQ.

Mr. Laing noted that TCEQ has tried to remove the potential for politics to influencing when a drought stage is triggered. Triggers need to be objective and based on science—and not a whim or political pressure. For many municipalities, a large portion of their annual budget is based upon water sales. Waste water provides municipalities somewhere between 40 to 70 percent of their income. He said if the more stringent drought stages are triggered, people start conserving water and many towns and cities experience a significant impact on their budget.

With the TCEQ model as a guide, Ms. Ewing suggested developing a couple of templates for different sized entities.

Mr. Laing noted that it is important to consider the water supply source and how it is monitored.

The planning group members recognize the importance of making sure that everyone is on the same playing field. However, that is a difficult task since some cities have a voluntary Stage 1 drought restriction and others have a mandatory Stage 1 restriction. For example, the City of Wichita Falls is developing drought stages as they go along—since they have never experienced this type of extreme drought before.

There being no other discussion, it was the consensus of the membership that DBS&A create two to three draft templates for discussion and refinement at the next regular meeting. No action was taken on this agenda item.

12. Consider Appointment Of A Subcommittee To Discuss Existing And Potential Emergency Interconnections Information To Be Submitted To The TWDB Separately From The 2016 Regional Water Plan.

Chapter 7 of the 2016 plan requires discussion of the existing and potential emergency connections within the LERWPG area. Due to the confidentiality of this information, the TWDB is requiring the regional water planning groups to discuss this information out of the public forum. This information will be submitted separately from the 2016 regional water plan.

Today's agenda item is to determine if a new Region O subcommittee or an existing subcommittee will handle this task. Deadline for submitting this information is May 1, 2015.

Chairman Brown said it was his understanding that this task identifies the closest emergency interconnects for use by small communities that have run out of water.

Mr. Spear said he understands the confidentiality of this task due to its political nature.

Mr. McElroy asked if the information contained in the document is public record. Ms. Backhouse said it is not. It is submitted confidentially and separately from the plan. There is a potential security issue as well. This confidentiality and security issue is address in the Texas Water Code.

There was a question as to whether the group should examine existing or potential interconnections.

Ms. Ewing read the planning guidelines. "Regional water planning groups shall select and summarize information on existing major water infrastructure facilities that may be used for emergency interconnects and provide this information to the Executive Administrator confidentially and separately from the regional water planning document. This information may be collected in a tabular format that shows the potential users of the interconnection, the potential suppliers, the estimated potential volume of supplies that could be provided via the interconnection (including source name) and a general discussion of the facility, its infrastructure, and its location."

Ms. Backhouse offered a clarification. "At a minimum, the information collected should contain basic information, such as currently existing emergency interconnects. However, if there is a currently existing infrastructure facility where a future connection could be developed in the event of an emergency shortage of water, then this should be identified in very general terms."

Mr. Laing noted that the TCEQ has all of the interconnection information for every public water supply. This can be provided to the TWDB if they request it from the TCEQ.

After brief discussion, Chairman Brown appointed the existing water management strategies subcommittee to handle the new task. Mr. Spear is chairman and the members include Dr. Melanie Barnes, Delmon Ellison Jr., Mark Kirkpatrick, Malcolm Laing, Dr. Ken Rainwater, Kent Satterwhite and Jim Steiert. Mr. Spear will poll the group to determine the best meeting date, time, and location.

COMMITTEE REPORTS AND OTHER INFORMATION:

13. Receive A Report From The TWDB Project Manager.

Ms. Backhouse discussed the working schedule for some of the projects that the TWDB is working on for the regional water planning groups.

TWDB staff is working on the structure for the water management strategy modules for the water planning database. This module may be released in either January or February. This may result in a time crunch for consultants to enter data—but the TWDB plans to release a template of the structure this fall to guide consultants on how to format/structure these data.

There are two survey applications which will be used to develop the regional plans. One is an implementation survey for Chapter 11, which examines the level of implementation of water management strategies from the 2011 plan and compares them to the 2016 plan. This should be completed and released in advance of the May 1, 2015 IPP deadline. The other is an infrastructure finance survey for Chapter 9. This will likely get pushed back to the spring. This will likely be submitted with the final plan in the fall of next year. The same may apply to the socioeconomic analysis required in Chapter 6. Again, these will be submitted as part of the final plan—and not the IPP.

The Initially Prepared Plan is due to the TWDB on or before May 1, 2015. It will be adopted at a regular meeting of the regional water planning group—and all regular posting requirements apply.

Once received, the TWDB has 120 days in which to review and issue comments on the IPP. The comments should be received by Region O by the end of August 2015.

The 30-day public comment period begins when the notice is posted. After the 30-day period, a public hearing is held where oral/written comments are received. The written comment period is open for 60 days after the hearing. State and Federal agencies have 90 days to comment after the public hearing. Chapter 10 includes the LERWPG's response/revision of the plan based upon comments received from the TWDB and the public. After revisions, the final plan will be approved at a regular meeting and submitted to the TWDB on or before Nov. 2, 2015.

Mr. Spear asked about the type of comments that the federal agencies have provided concerning past regional water plans. He expressed concern about the U.S. Fish and Wildlife Service and their listing of critical habitat of sharpnose and small-eyed shiners in the Upper Brazos River basin in Garza County and how this listing may impact water management strategies located in or near the shiners' critical habitat.

14. Receive A Report from the Region O Technical Consultant.

Ms. Ewing had no other comments.

15. Receive A Report from the Region O Administrator

Mr. Coleman thanked Mr. Ingham for his presentation regarding the role of PRPC in the regional water planning process. Some months ago, there was discussion of moving the administrative duties associated with regional water planning from the High Plains Water District to another political subdivision. Mr. Coleman said he hopes to locate a political subdivision to accept those duties at the start of the next regional water planning cycle.

Mr. Spear said that discussions were held earlier this year with the South Plains Association of Governments (SPAG). They indicated that they would be agreeable to becoming the administrator if a funding mechanism, similar to Region A, was in place.

16. Receive A Report From The GMA # 2 And GMA # 6 Representatives.

Mr. Hopper and Mr. Campsey were absent. No report given.

17. Receive reports from liaisons to other regional water planning groups.

Region A: Mr. Satterwhite was absent. No report given.

Region B: Mr. Campsey was absent. No report given.

Region F: Mr. Everheart reported that a quorum of voting members and alternates was not present at the last Region F meeting. Therefore, no business was conducted. He commended the Region O members for their dedication to the regional water planning effort. He also commended Mr. McCain, the HPWD staff liaison, for his work in keeping members informed and making sure there are quorums for each meeting.

Region G: Mr. McClendon had nothing to report.

18. Receive Public Input & Comments To The Regional Water Planning Group.

Chairman Brown called for public input and comments.

Each member was provided a copy of written comments from J. Collier Adams. Chairman Brown invited Mr. Adams to offer comments to the planning group.

Mr. Adams said he has been following the mandatory desired future conditions set by the High Plains Water District, which he considers “an encumbrance on the land—similar to the per-inch rule that is an encumbrance for governmental purposes, in my opinion, for conserving the aquifer. And in my opinion, the government must use the imminent domain process and pay landowners for what the government takes. The imminent domain process is skipped or abated by the local planning boards and water boards...and then the process is skipped when the rule goes straight to the agency for enforcement.”

Mr. Adams thanked the regional water planning group for their time.

Mr. Kelly Young offered comments. He asked the regional water planning group members if they were familiar with U.S. Code Title 18, Section 242, which discusses deprivation of rights under the color of law.

Mr. Young quoted the section by saying “it is a crime for a person acting under color of any law to willfully deprive a person of a right of privilege protected by the Constitution or laws of the United States.” He encouraged the membership to read the rest of the section.

He said there is a conspiracy to deprive rights. He thinks everyone should be careful when talking about private water or public water. There is nothing to worry about when discussing public water supplies—but it is prudent to realize that it is against the law to get together and discuss, in his opinion, any type of rules that would impede someone’s private property. He believes that property is guaranteed by the Constitution of the United States, the Texas Constitution, and the Texas Land Patent.

He believes it is important to always distinguish the difference between public property and private property. And when thinking of private property, it is imperative to talk about how the landowner will be compensated, if you do something that impedes someone’s private property. This was affirmed by the decision in Edwards Aquifer Authority vs. McDaniel in 2012. He concluded his remarks by saying it is highly important to consider this when groups discuss these things.

19. Consider A Date And Agenda Items For The Next Regular Meeting.

After discussion with the membership, the next regular meeting of the Llano Estacado Regional Water Planning Group will be 10:00 a.m., Friday, November 21, 2014 at the HPWD office.

20. Consider Other Business And Announcements.

Chairman Brown called on the membership to consider other business and announcements. There being none, no action was taken.

21. Adjournment.

There being no additional business, Chairman Brown adjourned the meeting at 11:56 a.m.

The above conveys my understanding of the issues discussed and conclusions reached. I assume this understanding is correct until notice to the contrary is received.

Respectfully submitted,

/s/ Doug Hutcheson

Doug Hutcheson, Secretary-Treasurer
Llano Estacado Regional Water Planning Group

These minutes were approved at the November 21, 2014 regular meeting of the Llano Estacado Regional Water Planning Group.