

————— Minutes —————
 Atascosa River (Segment 2107) Aquatic Life and
 Recreational Use-Attainability Analyses
 Public Meeting
 Evergreen Underground Water Conservation District
 November 5, 2009
 7:00 – 9:30 pm

<u>Attendee</u>	<u>Representing (As Stated on Meeting Sign-In Sheet)</u>
Beth Almaraz	Nueces River Authority
Diana Bautista	Atascosa County Courthouse
Gerald Black	Pleasanton Express
Joe Bosquez	City of Pleasanton
Joy Caraway	
Cary Cochran	Rancher
Stanley & Nancy Coughran	Land Owner
Ken Diehl	San Antonio Water System
Richard Eyster	Texas Department of Agriculture
Janie Franklin	Land Owner
Verna L Franklin	Land Owner
Richard Franklin	Land Owner
Rocky Freund	Nueces River Authority
Ned Gossett	
Rob Hinnant	Texas Farm Bureau
Lloyd House	Atascosa County Farm Bureau
Jim James	Atascosa County
Larry Johnson	U.S. Department of Agriculture Natural Resources Conservation Service
Fred F. Katcsmorak	Rancher
Jerry Kosuh	Atascosa County Soil and Water Conservation District #307
Jim Marsh	
Raymond Meyer	Texas Farm Bureau (State Director)
Hector Morieno	Pleasanton Economic Development Corporation
Tim Nickels	Paston, Behling & Wheeler LLC./ Union Pacific RR and San Miguel Mine
Ryan Novak	Atascosa County Soil and Water Conservation District #307
Sherry Orsack	Atascosa County Soil and Water Conservation District
Pete Pawelek	
Jesse Pawelek	Atascosa County Soil and Water Conservation District (Director)
Tina & Butch Pawelek	Rockin TP

Richard Pipes	Atascosa Wildlife Association
Chuck & Charlotte Ramsey	Lazy 2 Ranch
Dale Rankin	Texas AgriLife Extension Service
Rocky Roberts	Arrow S Ranch
Billy Shannon	
William Joe Shannon	Land Owner
Cody Shelton	San Miguel Electric Coop
Lloyd Stewart, Jr.	Live Oak County FIS
Sam Sugarek	Nueces River Authority
Ben Tabor	
Arthur Troell	Atascosa Water Watch
Stephen Twidwell	Texas Parks and Wildlife Department
Aaron Wendt	Texas State Soil and Water Conservation Board
Patricia West	Franklin Ranch
Natalie Wolff	Natural Resources Conservation Service

Support Staff

Dania Grundmann- Texas Commission on Environmental Quality (TCEQ)
 Lori Hamilton- TCEQ
 Larry Beran- Texas AgriLife Research
 Tim Jones- Texas Institute for Applied Environmental Research (TIAER)
 Ryan Novak- Atascosa County Soil and Water Conversation District
 Clyde Bohmfalk - TCEQ
 Chip Morris- TCEQ
 Earlene Lambeth- TCEQ
 David Pendergrass- TIAER

Administrative Issues

A public meeting on the Atascosa River Aquatic Life Use-Attainability Analysis (ALUAA) and Recreational Use-Attainability Analysis (RUAA) projects was conducted on Thursday, November 5, 2009 from 7:00 pm – 9:30 pm at the Evergreen Underground Water Conservation District in Pleasanton, Texas. The meeting was conducted to inform the public about the status of the ongoing Atascosa River RUAA and ALUAA projects. Hard-copies of the PowerPoint presentations were provided along with reports and maps.

Introductions

Dr. Beran opened the meeting with a moment of silence for the Ft. Hood tragedy that had transpired that afternoon. Dr. Beran introduced himself and was followed by the support staff. The attendees then introduced themselves. Dr. Beran stated that questions could be asked at any time and noted to the audience that a recorder was in place for the duration of the meeting. He said that after the meeting he wanted to visit with willing landowners to discuss access to their land for the RUAA and ALUAA.

Water Quality Standards for the Atascosa River

Dania Grundmann thanked the Evergreen Underground Water Conservation District staff for hosting the meeting. Mrs. Grundmann began her presentation stating that TCEQ was working on a more holistic, common-sense approach to designating uses in Texas water bodies. She defined “use” and “criteria,” explained that the Atascosa River was currently classified as High Aquatic Life Use and Primary Contact Recreation, and presented the relevant dissolved oxygen (DO) and *Escherichia coli* (*E. coli*) criteria for these classifications. She described the two types of Use-Attainability Analyses (UAA) and stated the purpose of these analyses were to determine the appropriate aquatic life use and recreation use. She said it used to be assumed that most Texas water bodies were High Aquatic Life Use and Primary Contact Recreation, but now TCEQ is conducting studies to find out for certain.

A comment was made that the river in Poteet had been dry for three years. Mrs. Grundmann responded that that is exactly the information TCEQ needed to hear from the landowners so that the appropriate uses could be assigned to the Atascosa River.

Mrs. Grundmann continued her presentation by discussing why an ALUAA and RUAA were pertinent at this time. She noted that sampling in previous studies was geographically limited to portions immediately in and just downstream of Pleasanton and that the TCEQ Water Quality Standards (WQS) Group had recommended an ALUAA of the entire stream. She said an RUAA would inform whether a bacteria TMDL is necessary. TCEQ wants to test assumptions. She explained some of the proposed changes in RUAA criteria for the 2010 WQS. She displayed the project participants and finally her contact information.

Q (Judge Diana Bautista): What type of use are you looking for?

A: Mrs. Grundmann deferred to Ms. Hamilton who answered that TCEQ was not seeking a particular classification but would let the ALUU and RUAA determine the use. She then briefly described the proposed use categories for aquatic life uses and recreational uses. She stated that TCEQ was working to make TMDLs more efficient by focusing their efforts on segments that truly need a TMDL. She explained that the Atascosa is a classified segment and changing the designated use requires a UAA. She reiterated that the Atascosa River is designated High Aquatic Life Use and the TCEQ will be using a biotic integrity score to determine the proper use.

Recreational Uses in Texas

Ms. Lori Hamilton began her presentation by discussing the broadening of recreational use categories. She presented current use categories and draft categories with their respective criteria.

Q (Judge Diana Bautista): Why are you working in this area when we have had little or no rain? Our rivers are completely dried up.

A (Ms. Hamilton): Tim Jones will document when the river is dry. If the upper portion is dry we take that into account to understand the use of the river.

Comment (Dr. Beran): Your involvement is important.

Comment (Ms. Hamilton): We enjoy listening to local landowners to gain input. We will include your comments and information as further justification for setting the appropriate standard.

Ms. Hamilton continued her presentation stating that to change presumed uses that were inappropriate TCEQ developed UAAs. She then defined the draft presumed Primary Contact Recreation classification of most Texas water bodies and the draft additional classes: Secondary Contact Recreation 1, Secondary Contact Recreation 2, and Noncontact Recreation.

Q (Art Troell): What law are you answering to? What authority?

A (Ms. Hamilton): Clean Water Act law and Texas statutes. Work group meetings are where the public is invited to be part of the process. There is also a public notice and comment period when rule changes are under review and this is followed by a public hearing.

Q (Art Troell): Texas state law?

A (Ms. Hamilton): Texas water code.

Ms. Hamilton continued her presentation with a definition of UAAs and a description of procedures. She reiterated the purpose of a UAA was to clarify the appropriate use and criteria for a water body and that TIAER needed stakeholder participation for the UAA to accurately reflect the Atascosa watershed.

Q: It seems like we should be talking about how filthy the river is. They've been coming for 5 years and still nothing has been determined. Where is all the study info?

Comment (Hector Morieno): I have a hard copy of a study from TIAER I found online. (he waved the print-out for the audience to see)

A (Ms. Hamilton): We received feedback from landowners that standards were inappropriate. Part of our reorganization at TCEQ was to change our handling of TMDLs. Before we determine what comes next we need to determine what use is appropriate.

Q: What recreation level is it now?

A (Ms. Hamilton): I'm not proposing anything.

A (Dr. Beran): It's presumed Primary Contact.

Comment (Richard Eyster): EPA said every stream had to be classified. Texas didn't have the money to do every stream so every stream was given Primary Contact classification. After that was approved by EPA we found out that not every stream can be like Barton Springs. TCEQ said "that's not realistic and we need to change our approach." That's why we need to do the UAAs. We need to find out where and how people are using the water bodies. Then we'll find out how much to clean it up.

A (Ms. Hamilton): The reason we want landowner access is because road access is limited. Landowner use of their streams varies around the state, what is and is not occurring.

Comment (Dr. Beran): Tim Jones will bring this home to you, what this is all about. YOU are going to characterize your river to show others what it ought to be.

Ms. Hamilton continued her presentation with additional details on UAA procedures, emphasizing stakeholder input. She stated that Tim Jones and TIAER would be getting in touch

with landowners to find out information. When they go to the sites they will document whether they see recreational activities occurring.

Q (Gerald Black): During the last study they said they were going to go to such and such places at various times and it had nothing to do with whether it rained or not which is a HUGE factor. It seems like if you're going to come out only a handful of times it won't address the problems of the river and set an appropriate level.

A (Ms. Hamilton): For the recreation use we aren't looking at the bacteria levels, just the level of recreational activities that are occurring. Since we're only coming out twice, our goal is to use stakeholders to fill in knowledge gaps. For ALUAAAs we go out during summer months to see, for instance, critical DO levels. Later in fall there might be more flow. We don't want to go out right after a rain event.

Comment (Gerald Black): This occurred 12 hours after heavy rains because of low DO. (Handed Lori pictures of bass fish kill near Pleasanton)

Ms. Hamilton concluded her presentation with web page addresses for WQS and the Standards Advisory Work Group.

Atascosa River Recreational Use-Attainability Analysis (RUAA)

Dr. Beran introduced Tim Jones. Mr. Jones reminded the audience of his previous work in the Atascosa watershed including his attendance at the July meeting when he met with many stakeholders and discussed cooperation with TIAER's field efforts. He mentioned that he had been doing field work in the watershed for several years and that he doesn't do the water sample analyses, only the field data collection. Mr. Jones opened his presentation acknowledging the TCEQ as the lead agency and the EPA for funding of the UAAs. He then explained the fundamental differences between RUAAAs and ALUAAAs. Citing earlier comments from the attendees he stated that the landowner knowledge of no-flow conditions needs to be validated for the purposes of the RUAAAs and ALUAAAs. He proceeded to cover historical *E. coli* bacteria data relevant to the RUAA, beginning with the first 303(d) listing for elevated bacteria in 1996. He reviewed the intensive monitoring and routine sampling that occurred in 2002-2004 by TCEQ contractors, NRA, and TCEQ. Current versus proposed recreation uses were covered briefly, reiterating information presented by Ms. Hamilton. Mr. Jones then presented a map of the Atascosa watershed divided into assessment units (AU). He showed a table comparing *E. coli* assessment findings to present and proposed criteria which demonstrated that AUs 01 and 02 were well above the present and proposed Primary Contact Recreation criteria of 126 and 206, respectively, but well under the proposed Secondary Contact Recreation 1 criterion of 630.

Mr. Jones moved to a discussion of the components of RUAAAs and offered the website URL for participants to find more information on RUAAAs. He compared basic and comprehensive RUAAAs and said that because comprehensive RUAAAs go beyond basic RUAAAs and are more energy intensive it is critical that stakeholders provide input and aid the process by coordinating with field data collectors. Mr. Jones cited the June 22, 2009 agency meeting in which it was deemed appropriate to do an RUAA. He then presented the sampling conditions under which RUAAAs are conducted and how sites are selected. Because 3 sites are recommended per 5 miles

of stream and road crossings are sparse along the Atascosa River, Mr. Jones entreated the landowners to participate by allowing TIAER access to their land so TCEQ can verify the level of recreation actually occurring in the river.

Comment (Richard Eyster): Bridge crossings are notoriously high for bacteria which is why we need land access.

Comment (Mr. Jones): We mention bridge crossings because they are access points for people to enter the water. We can use the crossings to get at width and depth and then go up- and downstream to determine the uses.

Mr. Jones drew the audience attention to a handout that listed what TIAER measures when it visits an RUAA site and he discussed the details. He reassured everyone that no chemical measurements would be made. He stated that TIAER visited three sites in the Pleasanton city park 31 July – 1 August 2009, and that there are 2 more RUAA trips scheduled for spring and summer 2010. He then showed pictures and preliminary results from the July-August visit. Most of the pictures showed fishermen and there was no primary contact recreation. He noted a park sign prohibiting swimming.

Mr. Jones continued by discussing remaining steps in the RUAA. Of primary importance was gaining access to stakeholder riverfront property to reconnoiter for potential RUAA sites. He reassured the stakeholders that they would never know TIAER had been on their property except for the phone call alerting them of TIAER's presence on a scheduled date. He said TIAER was extremely careful when on private land and field crew would do their utmost to remove all indications of their visit. Once more he solicited the audience for assistance in determining the proper classification for the Atascosa River. He specifically asked the stakeholders for two periods of access to their land. Mr. Jones concluded by providing his contact information and opening the floor for questions.

Q (Richard Eyster): Will landowner names be mentioned anywhere?

A (Mr. Jones): It is a question on the questionnaire but you can decline to provide your name.

Q: What is a site?

A (Mr. Jones): Some are TCEQ sites, other sites are labeled by us.

Q: We'll know where it's at?

A (Mr. Jones): Yes.

Atascosa River Aquatic Life Use-Attainability Analysis (ALUAA)

Mr. Jones opened his presentation with a nutshell definition of ALUAA: TIAER goes out and finds out what's actually living in the system. Several measures, such as DO, occur over a 24-hr cycle. He presented the historical data and 303(d) listing information. He repeated that the Atascosa River was designated for High Aquatic Life Use and he provided the associated criteria and a summary of DO results from the 2008 TCEQ assessment showing that AU 02 was not supporting for 24-hr average DO. Another table displayed the fish and benthic invertebrate data revealing non-support for High Aquatic Life Use in AUs 02 and 03 (the only AUs with fish and benthic data).

Mr. Jones then discussed the purpose of ALUAAAs. He said the Atascosa is assumed to be designated for High Aquatic Life Use, but that TCEQ is conducting this study to determine the actual level of use. He stated that ALUAAAs take 2 years and explained the Critical and Index Periods. He then described the parameters monitored during each sampling visit.

Mr. Jones presented a map showing potential sampling sites and displayed pictures from various road crossings previously sampled by TIAER (FM 99, Leal Rd., Coughran Rd, and Hunt St.). Next he presented a map showing the historical study area for biological surveys and noted the small area that was limited to portions of river in the southeast side of Pleasanton and immediately downstream from there. He mentioned the need to spread out geographically and gain access to 8 stations to characterize the overall nature of the stream. To do so, he said, TIAER needed cooperation from landowners. He sought commitments from willing landowners to enter their land 10 times over the two-year sampling period. He reiterated TIAER's respect of personal property. He said a March 15, 2010, start date was desirable.

Q (Dr. Beran): Can you characterize a visit to a landowner's property?

A (Mr. Jones): We determine transects. We measure dissolved oxygen. We take biological samples. We look at habitat. We can be in and out in 4-6 hrs at one location. Seining is an issue because of snags and can add time to our sampling.

Q (Richard Eyster): Plenty of notice for landowners?

A (Mr. Jones): Yes! We try to stick with our schedules but things can change with rainfall.

Q: It sounds like because everything was defaulted at primary contact, the only direction from here is down. Your standards are becoming more lenient through this process.

A: Mr. Jones deferred to TCEQ

A (Mrs. Grundmann): In terms of dissolved oxygen we're trying to find out what's appropriate. We just want to get it to reality. If it's not meeting the level it should be, we will do a TMDL. But if nobody is contact recreating in the water then it's not worth TCEQ's efforts to do a TMDL. We saw hogs and trash and that could be bringing down your water quality. It's a 103 mile river. If there are certain areas where the bacteria are high, then we can focus our efforts in those areas. We can still use older assessment data to inform our current analyses.

A (Ms. Hamilton): Part of the ALUAA process is to pick a reference site. We typically compare the reference to Atascosa to see if DO levels are low. If they are, we try to find why. We need to identify one of 6 reasons to make a change in the designated use (Ms. Hamilton listed the 6 reasons).

Comment (Dr. Beran): And the TMDL has not gone away, it is just stepped back.

Comment (Ms. Hamilton): We want to determine the criteria with which to assess the river.

Q (Hector Morieno): We are trying to make Pleasanton a tourist attraction but we have to clean it up. If we classify the river down does it make the EPA and Corps of Engineers say "the river's not worth fixing"?

Q (Richard Franklin): When all is said and done, if the Atascosa is not meeting standard will ranchers have to fence off animals from being able to cross river or drink the water?

A (Richard Eyster): Neither TCEQ nor EPA has jurisdiction to tell you to fence the cattle.

Comment (Richard Franklin): Thank you. That's what we need to know

Technical and Financial Assistance for Livestock Producers

Mr. Novak opened his presentation reminding the audience that for 70 years the Texas State Soil and Water Conservation Board (TSSWCB), Natural Resources Conservation Service (NRCS), and the Atascosa County Soil and Water Conservation District (ACSWCD) have been providing assistance to private landowners. He said the strategy of the ACSWCD was to work with landowners on BMPs by providing technical assistance. Since December 2006 the county has received grant funding from TSSWCB. Not every BMP will work for everyone. They are site specific and voluntary. Mr. Novak said that the primary purpose of water quality management plans (WQMP) was to provide assistance on pollution prevention and other water quality issues impacted by land use. He briefly described a district-cooperator agreement which includes maps, soil descriptions, a narrative, implementation schedule, and a recommendation worksheet.

Mr. Novak then discussed common reasons for doing a WQMP. He mentioned it can help prevent erosion before it happens. The WQMP can also prompt landowners to start doing things on their land instead of just talking about it. He said a WQMP is an “insurance policy” to show you’re doing something to help your land. It can potentially remove you from liability in water quality disputes. Mr. Novak explained the process in acquiring a WQMP. It begins with a visit to the ACSWCD office and scheduling an assessment. A plan is then created jointly with the ACSWCD.

Mr. Novak described two levels of financial assistance: local and federal. The federal assistance is based on a ranking system applied in the application process. Examples of BMPs given by Mr. Novak included cross fencing, livestock watering facilities, prescribed grazing, riparian buffers, pasture and hayland planting. He said landowners must have a contract with ACSWCD before seeking money for their project. He stated that the cost-share allocation from TSSWCB to ACSWCD is approximately \$32,000. He then presented to-date statistics on WQMPs in the Atascosa watershed. He concluded with contact information and opened the floor to questions.

Comment (Richard Eyster): If your grazing operation is under an approved WQMP it is protected from liability in water quality suits.

Landowner Assistance Request

Dr. Beran made a closing request for help from the Atascosa River stakeholders and asked if there were any further questions.

Final Questions

Q: What is the goal of the project and the advantage of cooperating with the project?

A (Dr. Beran): It’s an opportunity for y’all to characterize your own river.

Q: I know the TCEQ is analyzing the data collected. Is each segment going to be given a single classification? What about central Pleasanton where more people recreate?

A (Ms. Hamilton): This is new territory for us. My group will determine whether we are site specific or assign a use across the whole segment. I don’t have an answer, but we’re looking at it. For the ALU, if there’s a dry portion we’ll change the boundary and put a different use on it.

Q: Shouldn't the Pleasanton segment be taken out of the study since it's a lake and dammed?

A (Ms. Hamilton): We'll work close with Tim Jones to determine the flow characteristics and determine the appropriate use.

Q: You're getting false readings if you average in the Pleasanton area.

A (Ms. Hamilton): That's why we need your input.

Comment (Dr. Beran): You all will want to remain engaged. You will be able to set a standard for how this is done.

Comment (Ms. Hamilton): In our reports we'll have historical information, site location appearances, flow characteristics, results and discussion portion, etc. The recommendations portion is my group's responsibility. We'll write a recommendation regarding the appropriate use. That is what the public has opportunity to comment on.

Q: Tell these people who ultimately is going to make the decision. You send the report but we decide? Who is on the Commission?

A (Ms. Hamilton): Tim Jones submits the RUAA. My group determines a use and we send it to EPA who preliminarily approves it but then calls for a rule-change requiring public comment. A public notice is posted online and in newspapers. We have a 45-day comment period during which time anyone can write letters. Then a public hearing takes place. Anyone in this room has opportunity to comment with letter or email.

Q: You talked about a public meeting. Where?

A (Ms. Hamilton): Austin.

Comment: But Atascosa is down here!

A (Ms. Hamilton): Yes, but it's a state rule.

Q: Why are you doing this notice? To tell people not to swim?

A (Ms. Hamilton): No, it's just a notice of a rule change.

Q: You said it's a state rule change, but isn't this specific to Atascosa?

A (Ms. Hamilton): There are many changes throughout the state that are considered as part of a single rule change. The rule is thick (Ms. Hamilton held up fingers indicating a 1" thick document) and the commission considers changes to the rule during meetings in Austin.

Q: Is there any history that the EPA can and will reject what you suggest?

A (Ms. Hamilton): Yes. They have rejected changes before.

Q: Would it be possible when Tim Jones delivers his report to TCEQ to have a public meeting to discuss what TCEQ is THINKING about doing?

A (Ms. Hamilton): Yes.

A (Mrs. Grundmann): That's always our intention.

Comment (Art): It should be required!

A (Mrs. Grundmann): That's our intention.

Q: I think you'd have a better chance of having the rule changed doing the hearing in Atascosa instead of Austin.

A (Ms. Hamilton): Our intentions are to make the recommendations only after they have been shown to the landowners.

Comment (Dr. Beran): There will be no surprises.

Comment: We don't want to be told by anybody what's going to happen to us.

A (Ms. Hamilton): I have full intentions to come back and inform you as things develop.

Q: This will take 2 years?

A (Ms. Hamilton): This will be ongoing throughout the 2 years.

Mrs. Grundmann explained each step of the 2-year process and said that public meetings will be held throughout.

Q (Hector Morieno): Is this to improve the river or just tell us it's no good?

A (Ms. Hamilton): The first part is to make sure we've got the appropriate standard. Then we can take the next step.

A (Mrs. Grundmann): Even when we have the preliminary results then we probably could work with the stakeholders on moving forward with what the stakeholders want.

A (Ms. Hamilton): We have examples of stakeholders coming together and determining to do watershed protection plans.

Comment (Aaron Wendt): To a degree Environmental Quality Incentives Program (EQIP) money has been flowing in since 2006 when the TMDL first started to get rolling. There are efforts already underway to make improvements.

Comment (Richard Eyster): If there's areas with high *E. coli*, TCEQ can come in and clean up those discrete areas. There's not much we can do about wildlife. You've got to find out what's going on in the river.

Comment: I thought that's what the last study was for.

A (Richard Eyster): Other studies may have missed it. The more data we get the better off we are.

Comment: Most of the river is stagnant.

A (Dr. Beran): That's what we've learned from y'all. That's what we had to learn about this place. Spring-breakers aren't stopping off here! We need you to comment. There is going to be enough interaction here that when the rule shows up it's not gonna be a surprise.

Comment (Mrs. Grundmann): If you're wondering "when is the rubber gonna hit the road?" and that's the impetus of this group, then by all means work with us to push forward with a TMDL and implementation plan (I-plan) and partner with the Soil Board. A TMDL is just a number, but our team leader wants to emphasize the I-plan. We can start the I-plan process if that's what you want to do. The fact that it's impaired opens a lot of financial assistance. We can have an I-plan meeting and name a stakeholder committee if you want.

Dr. Beran asked to see a show of hands in the audience in support of forming a stakeholder committee to pursue an I-plan. Several hands were raised to have an I-plan informational meeting.

Q (Dr. Beran): How far reaching can the I-Plan be? Atascosa has a real local need.

A (Mrs. Grundmann): It can be as big or small as we need. I will talk to my team leader about coming down. We'll develop the meeting summary and handouts on the web.

Q: Does this become an enforcement issue? Say you decide it's non-contact and somebody sees a person swimming in Rocky's stream? (Chuckles in the audience)

A (Ms. Hamilton): No. If non-contact recreation is assigned to a stream, it simply means that the stream is not expected to be used for recreation that would involve a significant risk of ingestion.

A (Dr. Beran): It doesn't bring the police to town. It provides opportunity to work with a TMDL.

A (Richard Eyster): In Houston they have concrete lined their bayous and have told you not to swim, but there are still people fishing.

Mr. Jones gave another request for stakeholder participation on the UAAs saying TIAER needed to find as many locations as could be found in a short time. He directed attention to his business cards and handouts. He mentioned that even if landowners did not want TIAER on their land, their input on river history was still valuable. Mr. Jones gave an example of historical info he learned from a stakeholder.

Mr. Jones adjourned the meeting at 9:30 pm.