

Colorado and Lavaca Rivers and Matagorda and Lavaca Bays Basin and Bay Area Stakeholder Committee (BBASC)

Friday, May 13, 2011 at 9:30 a.m.
Lower Colorado River Authority board room
3700 Lake Austin Boulevard
Austin, Texas

Meeting Minutes

BBASC Members Present: Chair Patrick Brzozowski, Vice-Chair Myron Hess, Jim Dailey, Ronald Gertson, Jim Robinson (alternate for Carroll Hall), David Hill, Deedy Huffman, Joe King, Frank Lewis, Teresa Lutes, Jack Maloney (alternate for Dick Ottis), Bob Pickens, L.G. Raun, Caroline Runge, Steve Box (alternate for Andrew Sansom), Clarence Schomburg, Haskell Simon, Buddy Treybig, Suzanne Zarling

1) Call to order and introductions

BBASC chair Patrick Brzozowski called the meeting to order.

2) Discussion and agreement on agenda

The topic of replacing Clarence Schomburg's alternate was added to the agenda.

3) Public comments (limit 3 min.)

None.

4) Administrative business

- **Approval of minutes from March 30 and April 27 meetings**

The minutes from the March 30th meeting were approved with one change: the addition of a statement indicating that Buddy Treybig had agreed to resume his participation on the BBASC. The April 27th meeting minutes were also approved with one change: the addition of Buddy Treybig to the list of members present.

- **Replacement of Clarence Schomburg's alternate**

Clarence Schomburg announced that his alternate can no longer serve due to health issues. He proposed Willard Ulbricht as a replacement and gave an overview of his credentials. Members approved Clarence's selection of a new alternate.

5) Subcommittee and other updates

- **Facilitator/steering subcommittee report**

Brzozowski/Facilitators

Patrick Brzozowski reported that the facilitation steering committee continues to meet with the facilitators to plan agendas and process for the meetings, using the roadmap as a guide.

- **Report drafting subcommittee**

King

Joe King reported that the subcommittee is in the process of getting organized and should have progress to report on at the next meeting.

- **Work plan subcommittee &/or BBEST report on workplan**

Brzozowski

The BBEST is making progress on the work plan, which identifies information needed and changes for the ten-year review of environmental flow standards. BBEST Chair Dave Buzan went over their schedule for delivery of a draft work plan. The BBEST would like the BBASC's identified data gaps and questions by June 16 to include in the final work plan draft, which the

BBEST will provide to the BBASC on August 3. The BBASC will add the topic of data needs to the May 25 agenda. The facilitators noted that they were keeping a running list of possible work plan topics as they were brought up in BBASC meetings, and would append an updated and comprehensive list of these to the meeting minutes. (Attachment 1)

- **Strategies subcommittee** (*discuss formation*)

Patrick previewed the WAM subcommittee deliberations regarding categorization of flow gage sites based on the amount of unappropriated water at each site. Myron said that based on this exercise, and the consideration of whether BBEST flow regimes are being met at each site, a strategies subcommittee would try to determine where it would make sense to develop strategies. No action on subcommittee formation was taken.

6) Review consensus decision-making

Facilitators

Facilitators provided a handout of the BBASC's definition of consensus (from its Meeting Rules), along with principles to keep in mind that will help members reach consensus. (Attachment 2). The BBASC discussed how consensus works. A question was raised about what happens if consensus could not be reached, and whether a minority report could be issued on areas of non-consensus. It was noted that the BBASC rules address this, in the hopefully unexpected situation where consensus cannot be achieved.

Facilitators then provided the BBASC with the draft goal developed at the BBASC April 27 meeting. The BBASC revised the language to address concerns of different members of the BBASC, and reached consensus reached on the following language as a goal statement for the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays BBASC:

Develop implementable recommendations that provide for a sound ecological environment in the basins, including the rivers, bays and estuaries, balanced with sufficient water for other beneficial uses and which include an adaptive management process that provides for future sustainability.

7) Discuss implementation examples and other information needed to consider potential environmental flow standards

BBEST Representative

Dave Buzan gave a powerpoint presentation giving an example implementation of a BBEST flow regime. He laid out diversion rules that could apply above and below the subsistence, base, and pulse flow components. He walked through an example of a hypothetical off-channel project on Onion Creek to illustrate how the BBEST could evaluate the potential effect of the project on stream flow and whether any resulting deviation from the recommended BBEST regime is ecologically significant. Dave presented examples of a hydrologic condition approach, engagement frequencies of base flow levels, and the use of WAM run 3 in the analysis.

Bryan Cook of the BBEST next gave a powerpoint presentation that discussed two LCRA water rights as examples of implementation of environmental flow standards.

Lometa right: The first example was the Lometa right, above Lake Buchanan. It is a relatively small right, with an environmental flow requirement in the permit which must be met before LCRA can divert. The flow requirements consist of single monthly flow values, which are based on a percentage of historical monthly median flows. River flows are checked daily to determine if diversion can occur.

Permit 5731: This is the excess flows permit that was recently issued. Its restrictions are derived from upper tier base flows, thereby providing a high level of protection, rather than using different levels of base flow. It was written using the same studies upon which the BBEST report is based. Bryan described the environmental flow provisions at the Wharton gage in that permit. LCRA must satisfy both the flow at the each relevant river gage as well as satisfy bay and estuary criteria in the permit before it can divert. The bay and estuary provisions are based on specific volumes for each month. There must be a specific volume of flows to the bay at the Bay City gage in the prior 60 days in order for LCRA to divert. This permit always requires looking back 60 days before diversion can occur. Bryan

and other BBEST and BBASC members answered questions from the BBASC relating to the LCRA permit, to implementation of environmental flow conditions in permits or relating to the BBASC task.

Q: How is this (Permit 5731) enforced?

A: LCRA has to make sure they meet permit requirements. LCRA reports to TCEQ, which can verify LCRA's compliance with gage data. The permit is based on OP60. The "OP" stands for "operationalizing" science in the permit by MBHE studies, and the "60" referring to the 60-day look back.

Q: Does BBASC develop its environmental flow standard recommendation with gages, triggers, criteria?

A: It is up to BBASC. More specific environmental flow standards may be accepted by TCEQ. TCEQ's initial recommendation for Permit 5731 was simpler than what is now in the permit, but TCEQ accepted the more complex provisions because the parties in negotiation accepted it. It is simpler than the BBEST environmental flow restrictions because it took higher base flow restrictions.

Q: Do all permits have environmental flow standard provisions?

A: Few had them prior to about 1985, but many do after that time.

Q: Is there a reason why freshwater inflow requirements would not apply to all permits?

A: May vary because of size and geographic location in the basin. But for any future permits junior in priority to Permit 5731, these criteria, by default, are upheld. Permit 5731 is included in the TCEQ WAM.

Q: Would Permit 5731 be subject to the BBASC EFS recommendations (if adopted by TCEQ)?

A: The standards would apply only to the extent of the re-opener provision.

Kirk Kennedy discussed his handout entitled "Colorado BBEST/BBASC Unappropriated Flow Info from TCEQ WAM Run3." In response to questions he explained:

- The analysis only includes subordination agreements that are in a water right, not side agreements outside of a permit;
- It stops on the Colorado at Wharton because it tracks the BBEST environmental flow regime gages;
- It includes Permit 5731;
- It shows availability with Texana Stage 2 (Palmetto Bend) on line 15, and without Texana II on line 15A.

Other questions to Kirk:

Q: If there is a very high volume of unappropriated water in a month, could you get a permit?

A: No. Additional rules apply, such as whether there would be a beneficial use. Practically, it is not feasible. How to pump? How to store?

8) Review potential environmental flow standards at selected sites and determine the structure of environmental flow standards (flow components, seasonality, implementation triggers, etc) Kennedy

Select sites. The WAM subcommittee recommended that the following gaged sites on the table provided by Kirk Kennedy should undergo further analysis for possible balancing of environmental flow regimes and other factors:

- Site 10: Pedernales at Johnson City
- Site 15: Lavaca near Edna
- Site 20: Tres Palacios
- Site 21: Garcitas Creek.

The WAM subcommittee further recommended that the BBASC consider gages in two different groups:

- The four noted above, which may have enough water for a balancing discussion. For the next meeting, the BBASC will look at the impact of the BBEST EFR on these sites.
- Other sites, at which availability is so low that there is a low likelihood of water supply projects being viable.

In response to a question about why the subcommittee did not choose a location on the Lower Colorado, a member noted that the WAM 3 run shows there are periods of ten years without water available. The subcommittee could not foresee a project to consider. They may consider a possible aquifer storage and recovery (ASR) project at another location that had a ten-year period without water available.

Structure of environmental flow standards. The facilitators posted an example of the structure of the environmental flow regime that the BBEST proposed, and noted that the BBASC was able to determine its own structure. In response to an inquiry about what the other two EFS submittals to TCEQ looked like, Myron Hess noted the following:

	BBEST		BBASC	
Sabine/Neches	Subsistence 3 Base 2 Pulse		No standards suggested initially. Later: Subsistence 1 Base 1 Pulse	
Trinity/San Jacinto	<u>BBEST A:</u> Subsistence 1 Base	<u>BBEST B:</u> Subsistence 3 Base 3-4 Pulse	<u>BBASC A:</u> Subsistence 1 Base	<u>BBASC B:</u> Full suite of BBEST

BBASC discussion on the following question:

Is there a reason we would want to change the BBEST recommendation?

- L.G. Raun indicated he had some questions in his area related to numbers, but not the structure of the recommendation.
- The BBEST regime represents natural flow
- Standards have to be something humans can influence
- Don't "create" the pulses but don't impair them
- Closer to the bay, channel maintenance may not matter
 - Pulses are important to the upper basin because of channel and refuge. In the lower basin, pulses are important for sediment and nutrient transport
- Structure of EFS may be different based on geographic area

Q: Is the BBEST EFR recommendation a standard format? Why did BBEST choose this structure?

A: Format is from the Texas Instream Flow Program (TIFP), the SB 2 process.

Implementation: Though it looks complicated, there are only a few steps to implement:

- Find the hydrologic condition
- Look at the gage flow
- Establish and follow procedures

Q: Some streams empty directly to the bay area – small appropriations. Would TCEQ apply EFS to those locations as well?

A: Yes. Maybe the question is whether there is an applicable flow standard.

Additional ideas and thoughts from the BBASC:

- Can you write the standards in a way so that the big pulses are not included in the smaller permits? Take out 2 biggest pulse lines in the matrix except for really large permits

- If you combine base levels, you might not have as much water supply
- Concern about how to operate on all these criteria. It may be that base conditions are met because water has to pass. May identify low and high boundaries.
- Do you want to split the Colorado and Lavaca? Lavaca site will be project driven?
- David Buzan: Look at some recommendations (example Tres Palacios) – there is essentially one base flow for the year.
- Can the BBEST structure be simplified?
- Concerned about differences at each site because of complexity.
- If no one ever asks for another permit, will our standards ever be used?
- What about a set of rules for operating?
- Should we set a floor?
- Might use simplified approach for small diversions that would not affect pulse flows. But small permits can have a large impact on the system. Look at impact, not just size.
- Not enough time to make those fine decisions. Need “rules” on how we will set standards.
- Will also have flow conditions relative to unappropriated flow and environmental flow conditions. Need to make it simpler for permittees.
- TCEQ likely to want a clearly implementable standard, but probably won’t give more specific guidance.
- TCEQ said it was important for the BBEST to make it clear why they made their decisions. TCEQ likely to use EFS if the BBASC shows strong consideration of the BBEST, with balancing, and dialogue with BBEST
- Will we look at environmental flow regimes one basin at a time and then decide whether to simplify?
- Suggestion to divide BBASC into basins to make these decisions.
 - But the subgroup might go down a road that would not be acceptable to those in other subgroup (e.g. re environmental)
 - Divide up at a BBASC meeting and report back?
- Alternative approach: Review all before next meeting and talk as a whole group.
- Agreement: All stakeholders will review the BBEST environmental flow regimes at each of the 21 sites before the March 25 meeting. If members want to change numbers or the regime structure at any site, bring that recommendation to the March 25 meeting. If we reach consensus, changes will go to the BBEST for review.
- Also look at whether there are enough commonalities to develop one method/format.
- Also next meeting, consider whether particular gages could be used for EFS recommendations (geographic scope of gages for final recommendations), or whether BBASC wants to make recommendations at each of the 21 sites? Consider coverage for the various parts of the basin
- Channel maintenance:
 - Is this typically included in permits? Is it new? Permit 5731 has channel maintenance in it.

Consider deleting channel maintenance from the EFS structure for BBASC recommendations, but put it in the report discussion.

9) Select factors to use in balancing environmental flow regimes and other needs.

Facilitators

The BBASC used a brainstorm session for a few minutes before the meeting adjourned to generate the following factors that would be important to consider in developing the BBASC environmental flow standards:

- Environmental impact
- Cost – unit cost, changes to reduce cost
- Yield reduction

- How to get water elsewhere
- Long-term cost of not having water

10) BBASC questions regarding BBEST Report Representative

BBEST

The BBASC determined it would continue to circulate questions via the e-mail list serve rather than use time at this meeting.

11) Public comments (limit 3 min.)

None.

12) Meeting wrap-up

Items for next meeting:

- Review each gage site and determine the structure of EFS at each site: whether they should have all or some of the components from the BBEST
- Factors for balancing

Meeting review

What went well?

- Used specific examples
- Stayed on point

What could change?

- Return from breaks quickly and be punctual, bring your beverage back
- Have a working lunch
- Use more specific examples

Adjourn

Attachment 1

Work Plan list

(This is a running list of possible work plan topics that will be updated after each meeting)

Added March 30, 2011

- Additional data for improving flows on commercial fisheries & a strategy using that as a foundation. Using data from Buddy

Added April 27, 2011

East Matagorda Bay

- Potential influence of groundwater discharge on East Matagorda Bay
- Consider other ways to address concerns about East Matagorda Bay, such as how to increase flow, circulation to East Matagorda Bay
- What is East Matagorda Bay evolving to?
- Sedimentation studies

Added May 13, 2011

- Ungaged inflow
- Needed gages/funding
- Sediment transport, nutrients, delta information
- Mussels

Attachment 2

Consensus

All members participating in a meeting at which there is a quorum agree that:

- their major interests have been taken into consideration and addressed in a satisfactory manner so they can support the decision by the group;
- given the combination of gains and trade-offs in the decision package and given current circumstances and alternative options, the agreement is the best one they can make at this time.

Principles of Consensus

Everyone actively participates.

Members have a common base of information.

Group creates atmosphere where everyone can share views and can disagree.

Respect disagreement as illuminating problems, improving decisions.

Use disagreement to discover unmet needs, and to find a way to meet them.

Be specific about concerns with a proposal, explain why it matters, and be open to options to address it.

