

Disclaimer: Review and approval of draft minutes by the BBASC for their July 18-19, 2011, July 28, 2011, August 2-3, 2011, August 16, 2011 and August 29, 2011 meetings did not occur until after the report submittal date of September 1, 2011. Members reviewed and provided comments on the draft minutes which were then presented for approval during the November 17, 2011 BBASC meeting. At this meeting the members agreed by consensus to approve the draft minutes for those meeting dates noted above, with member comments reflected verbatim as part of the minutes, as a reflection of the official record.

**Guadalupe, San Antonio, Mission, and Aransas Rivers and
Mission, Copano, Aransas, and San Antonio Bays
Basin and Bay Area Stakeholder Committee (BBASC)
Tuesday and Wednesday, August 2-3, 2011
San Antonio Water System (SAWS)
2800 US Highway 281 North
San Antonio, Texas 78212**

MINUTES

Members Present: Suzanne Scott, Chair; Dianne Wassenich, Vice Chair; Richard Fritz (for Bill Braden); Tyson Broad; Jack Campbell; Thurman Clements; Paula DiFonzo; Rick Illgner (for Karl Dreher); Liz Smith (for Ken Dunton); Jennifer Ellis; Garrett Engelking; Stephen Fotiades; Chris Hale; Jerry James; Everett Johnson; Mike Mecke; Mike Peters; Con Mims; James Lee Murphy; Hope Wells (for Robert Puente); Doris Cooksey (for Kim Stoker); Walter Womack; Jennifer Youngblood.

I. Introductions:

Roll call was taken and a quorum was reached.

II. Public Comment:

There was no public comment at this time.

III. Discussion and Agreement on Agenda

IV. Approval of Minutes from the July 6, 2011 Meeting

Minutes for July 6, 2011 meeting will be considered for approval at the next meeting.

V. Discussion, Appropriate Action and Approval of BBASC Instream Flow Recommendations for the 16 Gage sites, Brian Perkins, HDR

At the last meeting, members were given a chart summarizing the preliminary voting on the recommendations for the 16 specified sites. Minor changes were made to the document and the revised document was distributed to the members.

Facilitator Marty Rozelle, The Rozelle Group, discussed the voting process for finalizing instream flow recommendations at the Tuesday session and Estuary recommendations at the Wednesday session. She explained that if no quorum is reached, 75% of the vote is needed to approve the recommendation.

The notes below are intended to reflect discussions surrounding gage considerations votes by the group. Formal votes have been noted and attached to these minutes. In all voting instances below G=Green vote/supports R=Red vote/does not support.

Concept 1 use of a Percentage Factor

Ms. Rozelle reminded members of the group's decision to use 10% as the factor for Concept 1. Members discussed their concerns with the 10% factor and other issues raised during previous meetings and what impact these decisions would have on inflows. Members were reminded that this decision would apply to all gages.

Mr. Cory Horan, TCEQ, stated that for suspension of consensus, 75% of the voting membership needed to agree which equates to 19 members in agreement.

Voting on Concept 1 with the 10% factor resulted in the following:

Initial Vote: 3R, 16G

Second Vote: 3R, 18G

Members discussed the use of a 20% factor for Concept 1. Mr. Perkins compared the impact of the 20% factor vs. the 10% factor on the different projects. Member Jim Murphy stated that the on-channel reservoirs have the biggest impact on sediment transport not the run of the river diversion, and limiting construction of future on-channel reservoirs is the best way to protect the sediment and nutrient flow in the river

Voting on Concept 1 with the 20% factor resulted in the following:

Initial Vote: 12R, 11G

Members proposed to re-vote on Concept 1 with the 10% factor. Voting on Concept 1 with the 10% factor resulted in the following:

Third Vote: 5R, 18G

Members who opposed the 10% factor did not feel there was a significant difference in the environmental impact of using 10% vs. 20% to justify a reduction in the yield of the reservoir nor the increase in cost. Other members cautioned that there was not a full evaluation of the environmental impacts, only a yield assessment due to the time constraints.

Members considered voting to suspend consensus to allow the group the ability to move forward with agreement of 75% of the membership (19 members), however no vote was taken.

Vice Chair Wassenich proposed adopting a high percentage factor to be applied to a finite number of projects such as the 4 existing proposed projects in the Region L plan. Members discussed which projects to specify.

Members considered voting on the proposal to recommend Concept 1 with a factor of 20% to one new appropriation to be located in either basin, with a diversion of greater than 500 cfs, and applying Concept 1 with a factor of 10% to all other new appropriations. This decision would be revisited in the next Bay/Basin Stakeholder process and such would be included in the work plan. After discussion, this proposal was considered a preferential application of the rules and would be challenged legally. Other proposals considered were applying the higher factor to only to run of the river diversions, ban any new on-channel reservoirs or require new on-channel reservoirs to pass all pulses.

Concept 1

Members proposed to re-vote on Concept 1 with various factors to determine which factor would be applied to all gages. Voting on Concept 1 with various factors resulted in the following:

Initial Vote using 30% Factor: 16R, 7G

Second Vote using 20% Factor: 13R, 10G

Initial Vote using 15% Factor: 6R, 17G
Fourth Vote using 10% Factor: 6R, 17G
Initial Vote using 5% Factor: 10R, 13G
BBEST Recommendation (no Concept 1): 10R, 13G

Members considered other alternatives including additional studies, and higher standards during those studies. Chair Scott noted that the discussion about Concept 1 revolved around yield and environmental impacts forgetting that initially Concept 1 was introduced to simplify the permit process for the smaller diverters. Mr. Murphy urged members to consider suspension of consensus so that those members who have strong positions will be represented in the final report.

Members proposed to re-vote on Concept 1 using a 20% Factor with 5 tiers for all gages. Once approved, members will consider the number of tiers to recommend. Members **APPROVED** by **CONSENSUS** using Concept 1 with a 20% Factor and 5 tiers for all gages.

Second Vote using 20% Factor: 23G

Consideration of the 5 Tier Approach

Members proposed to vote on retaining 5 tiers for all gages. BBEST member Dr. Norman Johns explained that Concept 1 exempts the upper level pulses from rigorous permit enforcement. However, the pulses still occur and are only diminished at most by the maximum diversion rate. Members decided that a **vote is not necessary**.

Consideration of Restrictions for New Reservoirs

Members considered voting on restricting main stem on-channel reservoirs that inhibit sediment transport and restrict pulse flows. It was noted that this was consistent with the Region L Plan. Steve Fotiades suggested applying Concept 1 to run of the river diversions and not at on-channel reservoirs where the 5 tiers would apply. Members discussed various changes to the proposal and **tabled the proposal for a later date**.

Consideration of Base Flows

Members considered the issues relating to base flows and discussed the preliminary decisions recorded from previous meetings. Members were asked to consider two tiers vs. three tiers of baseflows. Chair Scott explained the proposed three tier approach to base flows based on the following hydrologic conditions:

- o Wet Hydrologic Condition 25% of the time
- o Average Hydrologic Condition 50% of the time
- o Dry Hydrologic Condition 25% of the time

where the three levels of baseflow are determined at the beginning of the season based on a twelve month rolling average of stream flow. Members noted that hydrologic conditions are included in the base flows under SB2 and the SB2 technical overview document clearly notes the importance of multiple tiers of baseflows. Chair Scott noted the additional work performed by the BBEST and BBEST member Dr. Thom Hardy. Dr. Johns suggested that members consider the number of tiers before defining the hydrologic conditions. Members discussed the differences between applying 1 tier vs. three tiers of base flows and the effects of each. They talked about how the flow structure was developed for the SB 2 flows and stressed the need for variability in both the BBEST and SB2 process. Members questioned why it was necessary to reduce yield when the BBEST recommendation supports the present TCEQ process.

Members proposed to apply three tiers of base flow from the gage at the Guadalupe River at Comfort downstream to Sandjes Creek near Westhoff. This would include the first 6 sites on the list. Members **APPROVED** by **CONSENSUS** to three tiers of base flow to these gages.

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Initial Vote Three Tiers for the Specified Reach: 22G

Tommy Hill, GBRA, gave an update on the affects of the drought on Guadalupe basin water supplies, river flows, and data related to the saltwater barrier.

Members considered applying three tiers of base flow to the specified sites on the Guadalupe River at Gonzales, Victoria, and Cuero. Member Con Mims proposed for the specified sites on the Guadalupe River at Gonzales, Victoria and Cuero, the adoption of the TCEQ structure with one base flow. Members had previously requested data for the flow over the saltwater barrier and felt that any decisions needed to wait until that data was presented. Members discussed the recommendations in the Region L plan as they related to various requests of members. Members discussed the gage readings at the saltwater barrier and suggested discussions with the USGS who owns the gage.

Members proposed to apply a three tier "structure" of base flow (no numbers) to the last three gages specified on the Guadalupe River at Gonzales, Victoria, and Cuero.

Initial Vote applying three tiers at
Gonzales, Victoria, and Cuero: 5R 18G

Mr. Mims proposed to apply one tier for the base flow at Gonzales and three tier "structure" of base flow at Victoria and Cuero:

Initial Vote applying one tier at Gonzales,
And three tiers at Victoria, and Cuero: 20R 3G

Mr. Everett Johnson proposed that GBRA install a gage below the saltwater dam with the condition that no flow below 150 cfs defined as subsistence flow for inclusion in the BBASC report. Members decided to defer the vote until the second day session.

VI. Adjourn

Wednesday, August 3, 2011 – Session II

Members Present: Suzanne Scott, Chair; Dianne Wassenich, Vice Chair; Richard Fritz (for Bill Braden); Tyson Broad; Jack Campbell; Thurman Clements; Paula DiFonzo; Rick Illgner (for Karl Dreher); James Dodson (for Ken Dunton); Jennifer Ellis; Liz Smith (for Garrett Engelking); Stephen Fotiadis; Chris Hale; Jerry James; Everett Johnson; Mike Mecke; Mike Peters; Con Mims; James Lee Murphy; Hope Wells (for Robert Puente); Doris Cooksey (for Kim Stoker); Walter Womack; Jennifer Youngblood.

I. Introductions:

Roll call was taken and a quorum was reached.

Marty Rozelle, The Rozelle Group, presented a recap of the previous days' activities. She discussed the numerous votes taken for the application of Concept 1 with various percent factors. Members approved the following:

- Concept 1 with 20% factor, tiers for all gages approved
- Three tiers for baseflows for gages located between Comfort downstream to Sandies Creek

She summarized the remaining issues that should be addressed. Since members were not all in agreement, she reminded members of the option to vote to invoke the suspension of consensus to allow the group the ability to move forward with agreement of 75% of the membership (19 members). Members discussed the adopted rules, how the suspension of consensus applies, and how it should be applied.

Mr. Murphy stated there are issues that GBRA cannot yield on and in these instances the group can agree to disagree and still move forward with a consensus. These areas are multiple tiers for base flows, multiple tiers on pulse flows, and additional set asides for bays and estuaries beyond what was recommended for instream flows. He said GBRA intends to live with the rules that result from this process but, it is the statutory right of GBRA to express their opinion in the rulemaking process.

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Members discussed the decisions made during the Region L planning regarding the mid basin project and discussed how to move forward considering the special interests of individual members. Members discussed how to represent minority opinions in the final documentation:

In discussion how to approach consensus, vice-chair Wassenich stated: "All of this works only if people really are all trying to come to consensus."

What follows below reflect subsequent discussion in exact quotes:

Jennifer Ellis: "Frankly, I guess that's where my concern lies. If we've, are we all, here around this table, working to that goal or are we not. And Jim (directed to member Jim Murphy), I have concerns, you know. You told me yesterday that you felt it was not in GBRA's best interest to come to consensus, and that likely it was better not to. And that's very concerning to me. I recognize that, in the Trinity basin, that strategy worked very effectively for the Trinity River Authority (TRA). And I feel like, in making my decisions here today, that's an important consideration."

Jim Murphy: "In response I will say I've tried not to apply the Trinity River Authority model, and I was one of the initial architects of the approach that the TRA took in that basin, and I'm

Comment [E1]: Cory, there was an important conversation here that I think should most definitely be included here, in quotes. I would have added it, but the tape is missing from this morning and from the prior day, so I wasn't able to. It was when I stated that Jim Murphy told me that it wasn't in GBRA's best interest to reach consensus at the end of the meeting the day before and his response that he was one of the chief architects of the strategy used in the Trinity basin and that he was proud of it. I request that this be added to the minutes in exact quotes.

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quite proud that they were able to affect the process in what I believe to be a positive way. And I note that because here GBRA has taken a different approach. They have not tried to challenge the BBEST science. We've attempted to rely on what the BBEST did, examine their assumptions, and see if we can live with them. I think that's turned out to be a far more harmonious approach as the Trinity river both BBEST and stakeholders were testy; they made our meetings look like choir get-togethers. But as far as your question, I want to put this on the table, and I said yesterday and I meant that GBRA is not opposed to consensus but consensus has to represent our views. If we have a serious disagreement on a particular point we can't go along to get along. We're not in a position to do that because we have a statutory responsibility to provide water supply. So we can't do that. For example, there's some areas, and I know we've spent a long of time talking on this but it's not time wasted. We're voting on 16 gages but the issues are the same, for example, GBRA can never yield on the issue of 3 base flows. There's no reason for 3 criteria, 3 tiers for base flows. There isn't a whole lot of room for compromise but we can have a consensus if we agree to disagree on those points. I don't see that as being an anti-consensus. A further point that we're not in a position to yield on is do we need additional set asides for bays and estuaries beyond what was recommended for instream flows. We don't agree on that and that's not going to change. We're not going to go along to get along on these issues. The reason it keeps coming up is that we vote again on 16 different gages. But I will point this out too, where I have held up green cards, on gages where I don't believe there is going to be a project built. Well, that's fine, but doesn't mean necessarily that we go along with the methodology or that we're going to stand up in public and say yes we do think that 3 tiers are necessary at Comfort or wherever. It's jus, I think we have a fundamental disagreement. The way I read the minutes, and I gave my copy to Erin (Newberry, SARA) is consensus doesn't mean unanimity, we just want to reflect all the view points as I said yesterday. Our position is unique because GBRA happens to be the only folks that are planning in the near term a large off channel storage, a large reservoir. But, if the other folks have their views and they're reflected in the report, that's great. But we want to make sure that consensus doesn't become a rubric by which, when we go the commission, and we're arguing over the rules, we're saying well, the group agreed unanimously or we had consent that we viewed that X, and when we go to argue otherwise we're in the position of saying GBRA is arguing that it says it's going against its own consensus. I don't know how much simpler I can make it than that. But, I go back to what I said yesterday, we ought to make sure we reflect viewpoints and the perspectives of all the members. And to me that's consensus."

V. Discussion, Appropriate Action and Approval of BBASC Instream Flow Recommendations for the 16 Gage sites, Brian Perkins, HDR Cont.

Gage: GUADALUPE at GONZALES

Members continued the discussion on the proposal to apply a three tier "structure" of base flow (no numbers) to the last three gages specified on the Guadalupe River at Gonzales, Victoria, and Cuero. Brian Perkins walked through the proposed three tiers of base flows at the Gonzales gage showing how the values impact available flows for future water rights. Vice Chair Wassenich noted members had already considered the three tier base flow for the Gonzales gage using Dr. Hardy's numbers. Mr. Perkins showed the results of using those adjustments to the baseflows.

Vice Chair Wassenich proposed to apply three tier "structure" of base flow using Dr. Hardy's numbers to the Gonzales gage on the Guadalupe River which will decrease the magnitudes by 40 cfs%. Result on a vote on the above proposal was as follows:±

Initial Vote for Three Tiers with Dr. Hardy's Numbers: 4R 19G

Comment [DCH2]: Insertion of meeting transcript based on comment above.

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Members discussed the importance of this location to both the environment and human needs.

Steve Raabe distributed a handout showing all the analyses on the Mid-Basin Project. He presented the additional work completed on the Region L mid-basin project comparing the project as it is depicted in the Regional L plan, and the comparable analysis in the BBASC using the BBEST criteria and the resulting impact on cost. It also included the additional variations applied by HDR.

Mr. Murphy distributed a handout on GBRA's position on environmental flows and made a statement regarding the handout.

Dr. Johns distributed a handout and reviewed the environmental impacts/inflows based on TCEQ standards at the East Texas structure.

Gage: GUADALUPE at GONZALES, CUERO, & VICTORIA

Chair Scott proposed to apply at the Gonzales, Cuero, and Victoria gages on the Guadalupe, an average for one tier structure (no numbers) of base flow in the winter and fall seasons and three tiers structure (no numbers) of baseflows in the spring and summer seasons. Members noted that the BBEST criteria does not propose any criteria for the winter and fall season and discussed other options. [Was there a Vote?](#)

Comment [DCH3]: No vote was taken at this point.

Chair Scott proposed to apply at the Gonzales, Cuero, and Victoria gages on the Guadalupe, an average hydrologic condition (in the middle) for one tier of base flow in the winter and fall seasons and three tiers of baseflow for the spring and summer seasons with the 50% rule on all seasons and Dr. Hardy's adjustments.

Result of a vote on the above proposal was as follows:

Initial Vote for One Tier/Three Tiers with Dr. Hardy's adjustment: 16R 7G

Members considered applying at the Gonzales, Cuero, and Victoria gages on the Guadalupe, the wet hydrologic condition for the one tier of base flow in the winter and fall seasons and three tiers of baseflow for the spring and summer seasons with the 50% rule on all seasons and Dr. Hardy's adjustments. BBEST Chair Vaugh cautioned members that variations that are being proposed have not been evaluated to understand whether the result is more or less water in the stream.

Members proposed to apply at the Gonzales gage (only), the three tiers with reductions based on Dr. Hardy's numbers and the 50% rule. Result of a vote on the above proposal was as follows:

Initial Vote for Three Tiers with Dr. Hardy's Numbers & 50% rule: 4R 19G

Suspension of Consensus

Vice Chair Wassenich suggested that a consensus could not be reached and proposed a vote to end consensus to allow the group the ability to move forward with agreement of 75% of the membership (19 members).

Initial Vote to Suspend Consensus: 6R 17G

Vote does not pass

Members discussed their different positions and noted that the disagreement was conceptual and not with the data itself.

Members proposed to consider a proposal to apply less than a 3 tier structure.

Initial Vote for less than 3 tier structure: OR 24G (2 members changed their votes to G)

Initial Vote for above one tier: OR 24G

Members directed Mr. Perkins, San Vaugh, and Dr. Johns to review options for the 1 tier winter/fall seasons and 3 tier spring/summer seasons, multiple models for the 2 tier structure (dry/average, wet/dry), and for one tier use wet, average, and dry. All will be run with the 50% rule, and pulses with 20% rule and Dr. Hardy's numbers.

Gages: SAN ANTONIO RIVER

Members discussed the preliminary decisions made for the gages in the San Antonio River during previous meetings. The preliminary decision made during the July 18-19, 2011 meeting for gages at Goliad, Falls City and Elmendorf in the San Antonio River included the SB2 structure, subsistence flows of 60 cfs with the 50% Rule; three tier base flows (25%, 50%, 25%) based on seasonal averages, high flow pulses and overbank flows as presented in the summary table provided. Members discussed the larger gap between the wet base flow and the first high flow pulse, and the lack of any biological connection for an intermediate pulse. Members discussed whether results of ongoing or future studies can result in revisiting the TCEQ rules.

Gage: SAN ANTONIO RIVER at GOLIAD

Members proposed that the instream flow recommendations with the modified 60cfs subsistence, 50% rule in place, average ISF baseflows with the addition of a second high flow pulse between the wet baseflow and first high flow pulse from the instream, other tiers remain, and Concept 1 at 20%. Results of the vote on the above proposal were as follows: Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as modified above: OR 21G 3 Abstained

Gage: SAN ANTONIO RIVER at FALLS CITY

Members proposed the instream flow recommendations adopted for the Goliad gage be applied at the Falls City gage with slight modifications.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as modified above: 20G 1 Abstained 3 Absences

Gage: SAN ANTONIO at ELMENDORF

Members proposed that the instream flow recommendations adopted for the Goliad gage be applied at the Elmendorf gage with the following site specific modification:

The addition of a second high flow pulse between the wet baseflow and first high flow pulse.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as modified above: 20G 1 Abstained 3 Absences

Gage: CIBILO CREEK at FALLS CITY

Members proposed the instream flow recommendations adopted for the Goliad gage be applied at the Cibolo Creek at Falls City gage with the following site specific modification:

The addition of a second high flow between the wet baseflow and first high flow pulse

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as modified above: 21G 3 Abstained

Gage: MEDINA RIVER at BANDERA

Members proposed the instream flow recommendations for the Medina River at Bandera gage using the following:

The subsistence flow values at Q95 levels, the 50% Rule, 3 tiers on the base flow, remaining BBEST tier recommendations, Concept 1 with 20%.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 22G 2 Abstained

Gage: MEDINA RIVER at SAN ANTONIO

Members proposed the instream flow recommendations adopted for the Medina River at Bandera gage with site specific adjustments:

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 22G 2 Abstained

Gage: MISSION RIVER at REFUGIO

Members proposed the instream flow recommendations adopted for the Medina River at Bandera gage with site specific adjustments and the following modifications:

Subsistence flows for summer not less than 1cfs

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 22G 2 Abstained

Mr. Murphy prefaced the following votes with the statement that GBRA did not object to the criteria previously considered for the lower gages on the Guadalupe not because GBRA felt they were necessary but because projects are not going to be built at those gage locations.

Gage: GUADALUPE RIVER at COMFORT

Members proposed an instream flow recommendation with BBEST recommendations throughout, Concept 1 with 20%, 50% Rule in place, subsistence flows adjusted to Q95 seasonal with BBEST summer level.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 21G 3 Abstained

Gage: GUADALUPE RIVER at SPRING BRANCH

Members proposed the instream flow recommendations with three tier BBEST baseflows, Q95 annual number for all seasons for subsistence flows (18 cfs), Concept 1 with 20%, 50% Rule in place.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 21G 3 Abstained

Gage: BLANCO RIVER at WIMBERLEY

Members proposed to adopt the BBEST recommendations except for Q95 levels for winter, spring and fall subsistence flows with BBEST level for the summer, 3 base tiers, 5 high flow pulses, Concept 1 with 20%, 50% Rule in place.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 21G 3 Abstained

Gage: SAN MARCUS RIVER at LULING

Members proposed the instream flow recommendations with BBEST recommendations except for Q95 levels for winter, spring and fall subsistence flows with BBEST level for the summer, 3 base tiers, 5 high flow pulses, Concept 1 with 20%, 50% Rule in place.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 21G 3 Abstained

Gage: PLUM CREEK near LULING

Members proposed the instream flow recommendations with BBEST recommendations

except for Q95 levels for winter, spring with summer and fall at 1 cfs, 3 base tiers, 5 high flow pulses, Concept 1 with 20%, 50% Rule in place.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 21G 3 Abstained

Gage: SANDIES CREEK near WESTHOFF

Members proposed the instream flow recommendations with BBEST recommendations except for Q95 levels for all seasons except summer which is 1 cfs, 3 base tiers, 5 high flow pulses, Concept 1 with 20%, 50% Rule in place.

Members **APPROVED** the above proposal by the following vote:

Initial Vote for recommendation as proposed above: 21G 3 Abstained

Gage: GUADALUPE RIVER at GONZALES

Mr. Perkins presented the additional analysis completed during lunch. He explained the different parameters used and the results from each variation for comparison. Members discussed the results and the impact on the environment and potential diversions.

Members considered whether or not to suspend consensus, additional variations in the recommendation for the Gonzales gage, and requesting the EFAG for an extension for additional time. Members decided to postpone further discussion until after consideration of bay and estuary recommendations.

VII. Discussion, Appropriate Action and Approval of BBASC Environmental Flow Standards Recommendations for Bays and Estuaries

Dr. Norman Johns discussed an inaccuracy in his previous analysis and the impact on the numbers previously presented. BBEST Chair Vaughn noted that in determination of whether the estuary was a sound ecological environment, this may impact this determination based on present day conditions.

Mr. Perkins reviewed the BBASC estuary recommendation structure decision process and the preliminary decisions made by members for each decision point.

If Estuary Standards are Adopted, what Form is Recommended

Mr. Perkins reviewed the preliminary vote taken on how TCEQ should handle future applications. He reviewed how TCEQ presently handles these applications, noted that bay and estuary standards are already imposed if the application is located within 200 miles of the coast. He discussed the difference between the estuary baseline and stream baseflows, and presented examples showing how future water right applications could impact the estuary baseline. He noted the problems with the baseline and talked about how to compensate for those problems. He recalled the suggestion to adopt the BBEST criteria with an acknowledgement that there are issues with the baseline historically and permits could still be granted as long as they do not make the baseline worse.

Ms. Kathy Alexander, TCEQ, asked whether the standards under consideration were intended to be included as part of the water availability analysis that TCEQ uses to evaluate water right permit applications. Mr. Perkins stated that with this proposal, the BBASC would provide TCEQ with a spreadsheet model in which TCEQ would input the baseline of regulated flows entering the estuary derived from the WAM model without the application represented. TCEQ would then run the WAM model with the application included and compare the resulting baseline to that derived before the application was included. This would determine the effect of the application on the estuary baseline.

Ms. Alexander noted that this approach is used in the Trinity and San Jacinto Basins to determine compliance with the standards. She added that it would be helpful if the BBASC included in their report the specific frequencies at which the baseline should be met with the TCEQ WAM modeled flows.

Members discussed the concerns raised about the present conditions of the bays and estuaries and potential recommendations to only maintain the “status quo”.

Member Tyson Broad ~~noted~~ **proposed** that based upon the size of the authorization requested and ultimately approved, the applicant would be required to mitigate for the authorized use of that right by setting aside a percent of the authorized amount for use by an acceptable means of the applicant’s choosing to meet/reach the attainment criteria of the bays and estuaries. Members discussed how to relate a single increment in the attainment criteria to acre-feet per year and whether the proposal can be implemented.

Members discussed whether to delay further discussion on the bay and estuary recommendations and reconsider recommendations for the remaining three gages on the Guadalupe. With discussion of postponing any decisions on the proposed mitigation concept until the next meeting, several members encouraged the group to consider an additional meeting the first part of next week so that adequate time remained to complete the report.

Chair Scott questioned the legality of proposing mitigation requirements on future water rights to compensate for historical issues. Members discussed the need for storage in the bay system so that water could be stored and later released when the bays and estuaries need the flow. Members noted that the BBEST found that historically the bays and estuaries were a sound ecological environment and as long as there is not a full utilization of authorized water use, then the instream flow criteria recommended is adequate to maintain those conditions and these strategies should be included in the work plan for future attention.

Comment [TB4]: Not sure this is correct

Members proposed to set aside 10% of reservoir firm yield that would be released during dry times for the bays and estuaries. Mr. Murphy shared with members that GBRA was already looking into assisting environmental flow needs by dedicating a portion of their future water rights and consented to allow this to be mentioned in the report. He added that he could agree to dedicating a portion of a water right to environmental flow needs if TCEQ could guarantee that the water would make it to the bays and estuaries.

After additional discussion, members refined the proposal to consider the instream flow recommendation with a 1331 wet condition, and all previous conditions 50% Rule, Concept 1 with 20%, and dedicating a 10% portion of diversion and/or storage firm yield from any new project toward environmental flows.

Members considered for inclusion in the two pending GBRA permits a combined total of 10% of the appropriation authorized to be dedicated to the environment. Members discussed the need for a more generic approach to the recommendation to address smaller permit requests for diversion and/or storage.

Members considered recommending that any new water right granted would include a provision to dedicate 10% of the authorized right to the environmental needs of the bays and estuaries.

Gage: GUADALUPE RIVER at GONZALES, CUERVO, & VICTORIA

Members proposed a “conceptual” instream flow recommendation with a 1331 wet condition, [and all previous conditions 50% Rule, Concept 1 with 20%], provided that any future water

right granted in the San Antonio and Guadalupe Basins dedicates a 10% portion “set aside” of the authorized right (diversion and/or storage firm yield, whichever is less) for the environmental needs of the bays and estuaries assuming TCEQ has the structure in place and can assure that those waters will reach the bays.

Result of a vote on the above proposal was as follows:

Initial Vote for recommendation as proposed above: 4R 19G

Mr. Murphy stated that the group should move forward with a vote on the 1331 recommendation and study the proposed mitigation strategies further. He contended that there was no science and it was not known whether the set asides would benefit estuaries.

Members proposed a “conceptual” instream flow recommendation with a 1331 wet condition, [and all previous conditions 50% Rule, Concept 1 with 20%], provided that any future water right granted in the San Antonio and Guadalupe Basins dedicates a 5% portion “set aside” of the authorized right (diversion and/or storage firm yield, whichever is less) for the environmental needs of the bays and estuaries assuming TCEQ has the structure in place and can assure that those waters will reach the bays.

Result of a vote on the above proposal was as follows: Initial Vote for recommendation as proposed above: 2R 17G 4 Abstain

Mr. Perkins provided examples of applying the 20% rule and how it affected the required pulses, yield, and ultimately GBRA’s proposed project. Members asked for clarification of what the potential impact of the proposal at the Victoria gage would be on applications to amendment existing permits to move diversion points upstream/downstream on the Guadalupe River. **Members agreed new environmental flow rules would not impact a change in use, change in location of use, or change in diversion location and would only apply to new authorizations or authorizations that increase the amount of water to be diverted or impounded.** *Did we agree to this or just discuss?*

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Comment [E5]: Please check tape on this

Comment [DCH6]: We made no interim or formal agreements at this point, discussion only.

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Members asked for clarification as to whether the new rules would apply to the purchase of existing downstream senior water rights with the intent to move the diversion point and use of the authorized water upstream to an area with lower cumulative flow. Ms. Alexander explained that these types of amendments are covered under the existing statutory authority which allows TCEQ to place special conditions in those water right permits. Applications for these types of amendments are reviewed for impact to the environment which may result in a flow restriction, and analyzed for impact to other water rights which can result in special conditions to the amendment to protect senior and existing water right holders.

Gage: GUADALUPE RIVER at GONZALES, CUERVO, & VICTORIA

Members discussed the different modifications to the original proposal, the resulting effects of each, and individual member’s concerns.

Members considered the instream flow recommendation with a 1331 wet condition, [and all previous conditions 50% Rule, Concept 1 with 20%], provided that any future water right granted in the San Antonio and Guadalupe Basins dedicates a 5% portion “set aside” of the authorized right (diversion and/or storage firm yield, whichever is less) for the environmental needs of the bays and estuaries assuming TCEQ has the structure in place and can assure that those waters will reach the bays and that any request for authorizations of 200 acre-feet or less would be exempt.

Mr. Murphy urged members to reject the idea of environmental flow “set asides”. He stated that it is the job of the permitting process to determine how much water is available and to only permit that amount. He added that is how water is reserved for the environment, not using numbers that are arbitrary and unjustified.

Members proposed the instream flow recommendation with a 1331 structure wet condition, [and all previous conditions 50% Rule, Concept 1 with 20%], provided that any future water right granted in the San Antonio and Guadalupe Basins dedicates a 5% portion “set aside” of the authorized right (diversion and/or storage based on diversion rate, whichever is less) for the environmental needs of the bays and estuaries assuming TCEQ has the structure in place and can assure that those waters will reach the bays and any request for authorizations of 200 acre-feet or less would be exempt.

Result of a vote on the above proposal was as follows:

Initial Vote for recommendation as proposed above: 4R-4R 18G 2-4 Abstain

Members discussed their differences and the compromises that have been made from the environmental perspective and the resulting benefits-effects to the rivers and to the estuaries and bays.

Referencing discussion regarding the above proposal, Ms. Ellis stated: “I recognize that you voted green on Everett’s (member Everett Johnson) proposal. So that’s the first time I’ve seen a green card from you. So that indicated to me that you’re willing to come to consensus on something. This is a proposal that was not acceptable to many, many people in this room. I’m wondering, if we can just talk through this, what you think you might be able to give back as far as some environmental protection. You’re saying absolutely no on a set aside idea. What might you be able to give back at this point that might be able to bring this group together and get this done so we can go home. The thing that you voted green on was a lot of compromises:

- No B&E criteria at all, completely taking all B&E protections and throwing them out, relying solely on the river gages to provide what the B&E needs
- Concept one at 20%, not 5%, not 10%, but 20%. That was an idea to try to simplify things and became a topic about yield, we indulged that, we went up to 20%.
- We don’t have any cumulative cap on that (concept one at 20%). That concern was never addressed. So we gave on that.
- Now we’ve given up base average, base dry, in 2 different slots here.

What can you give that would show, that would give some indication that you are willing to provide some protections that you are looking to get your yield for your project, and we all understand that and we’re trying to work with you here. But what are you willing to give? GBRA has, and I’m reading my TPWD magazine here, it says (refrencing TPWD magazine) “GBRA: leaders in stewardship of the Guadalupe River basin. All the way down to San Antonio Bay.” What can you give. What can you give to show that you care about the fact that we have an endangered species down there. That we have a lawsuit that’s threatening what we’re doing here. What can you give us? What are some ideas?”

Mr. Murphy responded: “To answer your question I’ll start out this way: I’ve been in about 100 mediations and even a couple of juries. And when people get tired, they just want to get a deal done. Beginning even before this process, even through Region L, we agreed to go from no environmental flows to accepting that we’d have to lower our application recognize that some of that water will have to be left in the river for the environment. We’ve compromised down to summer, and that was turned down. Then we compromised to lowering the yield. Again that was turned down. I said I’d abstain on Everett’s initial vote (referenced above). So we lowered our expectations in theory down to 22~~5~~000 acre-feet. I think that’s enough compromise. I see no benefit from the environmental perspective, other than to agree to just because. First of all by reducing these amounts. I don’t see any benefit to

Comment [DCH7]: Corrections to the outcome of this initial (i.e. not final) vote. Corrected per audio transcript.

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bays and estuaries either way. Moreover, I see absolutely no practical way to administer environmental set asides other than as a permittee saying “I really can’t divert whatever my permit amount is, I just have to divert less. If it’s a 20K acre-foot permit then I’ll just divert 17K acre-feet.” And quite frankly this is just an issue of what I’m willing to give up now is that I’m willing to suspend consensus and just move on. Environmental flow set asides is an issue better addressed not at 8:00 at night in a stakeholder group. That’s something TCEQ, if they think it’s a good idea they can put together a stakeholder group and we’ll discuss set asides.”

Members proposed the instream flow recommendation with a 1331 structure wet condition, [and all previous conditions with the 50% Rule for winter/fall only, Concept 1 with 20%], with no “set aside”.

Result of a vote on the above proposal was as follows:

Initial Vote for recommendation as proposed above: 7R 10G 4 Abstain

Mr. Murphy reiterated that from the work of the BBEST, the bays and estuaries are considered to be sound ecological environment based on historical conditions, and there are only concerns by some that the bays and estuaries are imperil. GBRA does not agree that the bays and estuaries are in peril.

Suspension of Consensus

Vice Chair Dianne Wassenich proposed a vote to suspend consensus and allow the group the ability to move forward with agreement of 75% of the membership (19 members).

Members **APPROVED** the above proposal by the following vote:

Initial Vote for Suspend Consensus: 21G

Gage: GUADALUPE RIVER at GONZALES, CUERVO, & VICTORIA

Members proposed the instream flow recommendation with a 1331 structure wet condition, [and all previous conditions 50% Rule, Concept 1 with 20%], provided that any future water right granted in the San Antonio and Guadalupe Basins dedicates a 5% portion “set aside” of the authorized right (diversion and/or firm yield storage, whichever is less) for the environmental needs of the bays and estuaries assuming TCEQ has the structure in place and can assure that those waters will reach the bays and any request for authorizations of 200 acre-feet or less would be exempt. This “set aside” would be applied to all 16 gages.

Result of a vote on the above proposal was as follows:

Initial Vote for recommendation as proposed above: 2R 17G 2 Abstain

Members proposed the instream flow recommendation with a 1331 structure wet condition, [and all previous conditions 50% Rule, Concept 1 with 20%], provided that any future water right granted in the San Antonio and Guadalupe Basins dedicates a 10% portion “set aside” of the authorized right (diversion and/or firm yield storage, whichever is less) for the environmental needs of the bays and estuaries assuming TCEQ has the structure in place and can assure that those waters will reach the bays and any request for authorizations of 200 acre-feet or less would be exempt. This “set aside” would be applied to all 16 gages.

Result of a vote on the above proposal was as follows:

Initial Vote for recommendation as proposed above: 3R 19G

VII. Discussion, Appropriate Action and Approval of BBASC Environmental

Comment [DCH8]: Insertion of meeting transcript based on comment below.

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Comment [E9]: Cory, I would like quoted piece added here of when I listed what we, from the environmental perspective, had given up so far, and asked Jim Murphy what he was willing to give.

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Flow Standards Recommendations for Bays and Estuaries Continued

If Estuary Standards are Adopted, what Form is Recommended

Mr. Perkins reviewed where the group had left previous discussion.

Members considered to use the BBEST criteria with the provision to allow projects to be permitted even though the baseline (either Region L or TCEQ baseline) already violates that criteria. Mr. Murphy noted that it was his impression that no explicit estuary standards are necessary because members just voted to add 10% instream flow standards.

Members discussed that there is no guidance on when the “set aside” would be released and this should be addressed. It was noted that at the last discussion, members did not want to make the baseline lower than Region L numbers.

Members proposed to vote on whether explicit estuary standards are necessary. Mr. Perkins explained that a no vote would imply that the instream flow standards adopted at the 16 gages are sufficient to protect the bays and estuaries and no additional restrictions are necessary.

Result of a vote on the above proposal was as follows:

Initial Vote for recommendation as proposed above: 3R 19G

Suspension of Consensus

Members proposed a vote to suspend consensus allow the group the ability to move forward with agreement of 75% of the membership (19 members).

Members **APPROVED** the above proposal by the following vote:

Initial Vote for Suspend Consensus: 1R 21G

Members proposed to vote on whether explicit estuary standards are necessary. Mr. Perkins explained that a no vote would imply that the instream flow standards adopted at the 16 gages are sufficient to protect the bays and estuaries and no additional restrictions are necessary.

Result of a vote on the above proposal was as follows:

Second Vote for recommendation as proposed above: 4R 18G

Members suggested adding to apply a flow limit to determine when the “set asides” would be released. Members added that the TCEQ would apply the recommendation.

Revised Vote for recommendation as proposed above: 3R 19G

Chair Scott asked if the group can just give some guidance to when the 10% “set aside” already approved will be released instead of voting on additional criteria. Members discussed where in the criteria, the agreed upon 10% “set aside” will have the most benefit.

NEXT MEETING

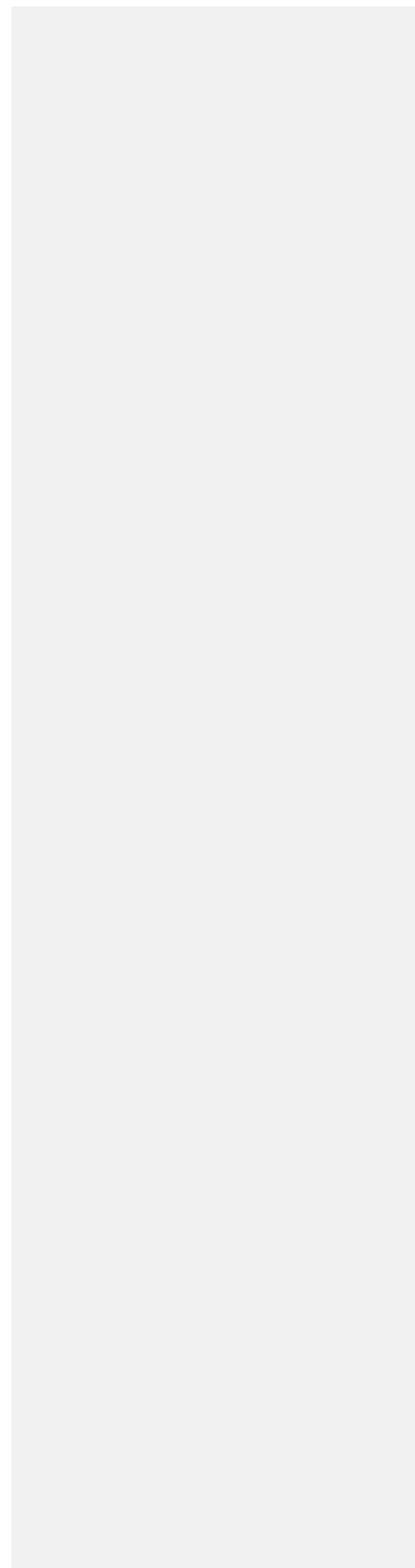
Members talked about scheduling additional meetings to allow time to complete the report. The next meeting is scheduled for Tuesday, August 16 at San Antonio Water System (SAWS). The following meeting is scheduled for Tuesday, August 23, 2011 at Seguin.

Members created a work group that supported the 10% “set aside” dedicated to the bay and estuaries to provide additional information to the full group. The work group will focus on providing guidance on the volume and timing for release of these “set aside” flows. The work group members include Dr. Norman Johns, Paula DiFonzo, James Murphy, Vice Chair Wassenich, and Tyson Broad.

Members created a work group to better define strategies. The group will discuss the 3 strategies analyzed by the National Wildlife Federation as well as other strategies proposed. The group will consist of members Tyson Broad, Jennifer Ellis, Mike Mecke, Jerry James, Walter Womack, Kim Stoker, James Lee Murphy, and Vice Chair Wassenich.

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BBASC Final Votes

Vote Issue	USGS Stream Gage	Vote	Abstentions	Notes
1st vote Concept 1 @10%	All Gages	3		
		16		
2nd vote Concept 1 @ 10%	All Gages	3		
		18		
Jerry James @ 20%	All Gages	12		
		11		
3rd vote Concept 1 @ 10%	All Gages	5		
		18		
Allow one new appropriation w/ 500 cfs diversion rate or greater @ 20% and other new appropriations live w/ 10% and revisit in BBASC workplan		No Vote Taken		
Concept 1 votes continued				
Concept 1 @ 30%	All Gages	16		
		7		
Concept 1 @ 20%	All Gages	13		
		10		
Concept 1 @ 15%	All Gages	6		
		17		
Concept 1 @ 10%	All Gages	6		
		17		
Concept 1 @ 5%	Concept 1 @ 5%	10		
		13		
No Concept 1 w/ BBEST recommendations	All Gages	10		
		13		
Jerry permit simplicity - Assuming 5 tiers of pulses, Concept 1 @ 20%	All Gages	0		
		23		
Concept 1 only applies to run of the river diversions - in the interest of allowing sediment transport	All Gages	TABLED		
3 tiers of baseflows	Guadalupe @ Comfort	0		
	Guadalupe @ Spring Branch	0		
	Guadalupe @ Wimberley	0		
	San Marcos @ Luling	22		
	Plum Creek near Luling	22		
	Sandies Creek near Westhoff	22		

3 tiers of baseflows w/o numbers for Guadalupe @ Gonzales, Cuero and Victoria	Gonzales, Cuero and Victoria	5		
		18		
1 tier of baseflows @ Gonzales w/ 3 tiers @ Cuero & Victoria		20		
		3		
3 tiers of baseflows w/ Hardy numbers	Guadalupe @ Gonzales	4		
		19		
Suzanne's suggestion for Gonzales Cuero & Victoria - 1 tier during winter/fall - 3 tiers in summer/spring -all with 50% rule and Hardy numbers	Gonzales, Cuero and Victoria	16		
		8		
Same as previous vote but w/ wet conditions for winter/fall		No Vote		
Gonzales 3 tiers baseflows w/ Hardy numbers & 50% rule		4		
		20		
Suspend Consensus		failed 4 red - 17 green		
Anything less than 3 tiers of baseflows at Gonzales		0		
		24		
Anything more than 1 tier of baseflows at Gonzales		0		
		24		
60 cfs subsistence, TIFP baseflows, interim BBEST pulse between wet base and 1st TIFP pulse (1-1520 winter, 2-1570 spring, 1-1640 summer, 1-2320 fall), concept 1 and 50% rule	SAR @ Goliad	0	3 abstentions	Adopted
		21		
60 cfs subsistence, TIFP baseflows, interim BBEST pulse between wet base and 1st TIFP pulse (1-1520 winter, 2-1570 spring, 1-1640 summer, 1-2320 fall), concept 1 and 50% rule	SAR @ Falls City	0	1 abstention, 3 absences	Adopted
		20		
Vote Issue	USGS Stream Gage	Vote	Abstentions	Notes
60 cfs subsistence, TIFP baseflows, interim BBEST pulse between wet base and 1st TIFP pulse (1-1520 winter, 2-1570 spring, 1-1640 summer, 1-2320 fall), concept 1 and 50% rule	SAR @ Elmendorf	0	1 abstention, 3 absences	Adopted
		20		

TIFP recommendations, Concept 1 @ 20%, 50% rule, interim pulses between wet baseflow and 1st TIFP pulse (570 winter, no interim in spring, 390 summer, 190 fall)	Cibolo Creek near Falls City	0	3 abstentions	Adopted
		21		
BBEST Baseflows, Q95 w/ summer BBEST, 50% rule, concept 1 @ 20%	Medina River @ Bandera	0	2 abstentions	Adopted
		22		
BBEST Baseflows, Q95 w/ summer BBEST, 50% rule, concept 1 @ 20%	Medina River @ SAR	0	2 abstentions	Adopted
		22		
BBEST Baseflows, Q95 w/ summer BBEST, 50% rule, concept 1 @ 20%	Mission River @ Refugio	0	2 abstentions	Adopted
		22		
BBEST recommendations, 50% rule, concept 1 @ 20%	Guadalupe @ Comfort	0	3 abstentions	Adopted
		21		
	Guadalupe @ Spring Branch	0	3 abstentions	Adopted
		21		
	Blanco @ Wimberley	0	3 abstentions	Adopted
		21		
	San Marcos @ Luling	0	3 abstentions	Adopted
		21		
	Plum Creek near Luling	0	3 abstentions	Adopted
		21		
	Sandies Creek near Westhoff	0	3 abstentions	Adopted
		21		
Baseflows - 1331 Wet	Guadalupe @ Gonzales	4	4 abstentions	
		16		
Apply 1331 Wet to Cuero, Gonzales & Victoria, with any authorized future permit throughout entire basin impose a 10% of firm yield or 10% of authorized annual diversion, whichever is less, set aside dedicated to B & E. Assuming TCEQ provide a mechanism to get set aside to B & E. Concept Vote	CONCEPT VOTE	4		
		19		
Same as above but w/ 5% instead of 10%	CONCEPT VOTE	2	4 abstentions	
		17		
Everett's proposal - Summer w/o 50% rule;	Gonzales, Cuero and Victoria	8	2 abstentions	

no diverting below 400 in summer; spring, fall, winter w/ 50% rule		11		
Same as above but spring & summer w/o 50% rule	Gonzales, Cuero and Victoria	7 12	2 abstentions	
Permits of 200 AF or less exempted, 1331 Wet, 5% on both		1 18	2 abstentions	
1331 Wet w/ summer & spring w/o 50% rule, no diversions below spring & summer baseflows		7 11	4 abstentions	
Motion to Suspend Consensus		0 22		Consensus Suspended
Apply 1331 Wet w/ any authorized permit w/i entire basin, TCEQ require 5% of firm yield or 5% of authorized annual diversion, whichever is less, to be dedicated for the B & E. Assuming TCEQ provide a mechanism to allow dedications to B & E. Permits of 200 AF or less exempted	Gonzales, Cuero and Victoria	2 17	2 abstentions	
Vote Issue	USGS Stream Gage	Vote	Abstentions	Notes
Apply 1331 Wet w/ any authorized permit w/i entire basin, TCEQ require 10% of firm yield or 10% of authorized annual diversion, whichever is less, to be dedicated for the B & E. Assuming TCEQ provide a mechanism to allow dedications to B & E. Permits of 200 AF or less exempted	Gonzales, Cuero and Victoria	3 19		Consensus Suspended, motion passes with 75% of BBASC members voting for motion
Explicit standards for B & E		3 19		Green vote was for explicit standards
Vote to Suspend Consensus	B & E explicit standards	1 21		With 75% vote consensus is suspended
Explicit standards for B & E		4 19		Explicit standards

			passed w/ 75% of vote
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