

Brazos River Basin and Associated Bay and Estuary System
Basin and Bay Stakeholder Committee (BBASC)
Facilitators' Summary of Stakeholder Interviews

Introduction

The summary is intended to provide insight into expectations, issues, interests and concerns of BBASC members, with the hope that the insights gained from such understanding can improve the chances for success in this stakeholder effort. This summary was developed by facilitators for the BBASC following interviews with 21 BBASC members.¹

Expectations

We heard almost unanimous expectations that the group should and could develop a consensus report. Most members expressed not only their desire to reach consensus, but also attributed this desire to the other members of the BBASC. From a procedural viewpoint, various members focused on two main elements of success:

A decision that is: 1) fair to all by addressing the major interests of all groups and representing give and take among all members; 2) useful to TCEQ in the rulemaking process; 3) within the bounds of what the scientists say can be achieved; and 4) is completed timely;

- Working well as a team.

Some BBASC members described a vision of what a consensus recommendation would be from a substantive viewpoint. The most common vision articulated the following focus:

- Adopting environmental flow standards that protect the environment and provide water for human needs and that are easily implemented and understood.

Stakeholders expressed differing views of what protecting the environment means. Some members felt that the flow regimes of history should be repeated, and the channel and fish populations restored. Others emphasized that the BBASC should not attempt to restore the river to pre-dam conditions. Many stakeholders did not have a definite vision of what a consensus recommendation looked like, however, articulating instead that the BBASC should together develop a goal for its work.

Substantive Issues/ interests

For the BBASC recommendation to be credible to its various members, the members must believe that the substantive issues important to them are considered and balanced in the deliberation of the group. BBASC members identified the following issues and interests of importance to them.

¹ BBASC retained Margaret Menicucci and Suzanne Schwartz of the Center for Public Policy Dispute Resolution at the University of Texas School of Law to assist in facilitating several meetings.

- Balancing environmental and human needs. All members expressed an interest in supplying water for both environmental and human needs. Members expect the balancing of these needs to be the main issue for the BBASC, and voiced a desire to find the right balance. Some people found environmental and consumptive uses as very compatible (for example if water were transported downstream for consumptive use), while others found them to be in a more competitive mode. Understanding whether its BBASC goal was to keep the river from further degradation, or to restore it to a past ecological standard, was important to many. In addition to providing sufficient water for the environment and recreation, some members noted the importance of recognizing watercourses as having inherent value in and of themselves, and not just as a commodity. Specific interests relating to water for human needs include meeting the needs of future population increases, including those projected in the regional water planning process both in and out of the Brazos River basin, and including sufficient water for industry, agriculture and business operations.
- Opportunities to create a better management system in the future. Some members expressed an interest in using the BBASC process to pave the way for a better management system for the future. Some specific issues include opportunities to recommend ways to change the way we use and pay for water, a general desire to provide a better way to manage water for the future, and consideration of the inequities of use of water for purposes such as water parks while farmers are denied water. Facilitators note that these may be issues to address in the strategy recommendations developed by the BBASC.
- Maintaining lake levels. The impact that lake levels and instream flows have on life style was noted as an important issue. There is a tension between those who want to keep the various lakes full and those who want to use water that is, or could be, stored in those lakes – either for environmental or consumptive use. Some members expressed a desire to apportion the impact to all reservoirs equally.
- System operations permit application. Members have various and, at times, divergent views about the importance of the system operations permit application on this process. One view is that the TCEQ administrative hearing process, rather than the BBASC process, is the right forum to discuss a permit application. Another view is that system operations permit application is relevant because it may be the only water in the basin that can be developed to address growing demands, and there are several environmental studies associated with the application. Finally, some view that it is only one component of the BBASC discussions, and does not need to be a focus of this group. Most members expressed a need to understand it better.
- Importance of water for varying ways of life. Some BBASC members noted that decisions in this process can impact significant changes in people's way of life, and voiced a desire that those living on the river be able to continue to pursue a lifestyle tied to the river, and that the process respect private property rights and the ability to use watercourses that abuts their property. The importance of continuing to use the river for recreational purposes, including paddling, also was voiced.
- Surface water-Groundwater interaction. Several members put a high importance on the BBASC maintaining the ability of water suppliers to use surface water and groundwater conjunctively for greatest supply at the lowest cost by using groundwater for peak demand. Others expressed a concern about how reductions in groundwater return flows

might impact water rights, and in making sure groundwater and the aquifers are not impacted by BBASC recommendations.

- Impacts on the lower basin. Several issues surfaced relating to the lower basin, including concerns about whether sufficient sustainable surface water will be available for the lower basin as its users rely less on groundwater to meet their needs. Those in the lower basin expressed additional concern that downstream water rights are controlled by upstream users and that downstream needs will not be considered sufficiently in the BBASC process. Environmental flows were seen to tie closely to the supply of water to the lower basin.
- Impacts on water rights in the future. Concern was raised about whether environmental flow standards might be imposed at a later time on existing water rights or amendments to such rights issued before September 1, 2007. This concern was voiced with acknowledgement that the law currently does not impose the environmental flow standards on such water rights, and also with the suggestion that the issue should be addressed in the BBASC report to TCEQ.
- Implementation. Some stakeholders identified implementation of the recommendations as an important discussion item. The primary focus was to create environmental standards that can be easily implemented and understood, and with an appropriate level of complexity.
- Other issues and interests. Among the other interests expressed, BBASC members noted that this process is an opportunity for self-determination by making consensus recommendations that TCEQ could adopt. While noting that water quality will not be a big issue, the BBASC will have to discuss it. Recognizing that the Brazos is a highly managed river basin was noted as important. Dealing with invasive species and golden algae were cited as important by some members.

Understanding Impacts

Understanding the impacts of the BBASC recommendations for environmental flow standards is a significant part of the process of developing final recommendations. Most BBASC members wanted to understand the effects on both human needs and the environment of protecting or not protecting specific amounts of water for environmental flows. Some specific elements of this inquiry relating to impacts on human use included impact on water availability for the various uses, and impacts regionally, such as for the lower basin. Closely associated with this, many BBASC members want to better understand the BBEST report. Some members expressed a need to understand the water availability *modeling* that might be used to further analyze the impacts of 1) the BBEST environmental flow regime recommendations on current and future water use, and 2) the impacts of current and future water use on environmental flows. Specific questions and concerns related to using the BBEST report and the WAMs are identified in Appendix 1 (Information Needs and Concerns) at the end of this report.

Members noted the multidimensional impacts of BBASC decisions: making a choice to manage for one thing can greatly impact another. Economic impacts are of interest to many, including impacts on the cost of water, and financial impacts of changes to recreational fishing. Additional specific concerns about impacts included impact on: groundwater and aquifers, groundwater-

derived return flows in the basin, lake levels, freshwater flows for the estuary, and flows to manage the salt water wedge.

Process Insights

We asked the members to reflect on how the BBASC process has gone so far and what insights they may have about the process. We heard several common observations, concerns and ideas for going forward.

Working with Diverse Interests and Developing Trust

Members recognized the value and the challenge of having diverse interests represented at the table. Most expressed a willingness to be flexible in order to address the task at hand and had a desire to reach consensus, but worried that others would be entrenched in their views. Some members identified factors they believed could foster consensus:

- respecting differences and conducting the dialog in a respectful manner;
- recognizing each other's contributions to the process, such as knowledge, experience, understanding of the basin, and resources (such as financial and technical contributions);
- speaking openly about what is important and why as well as listening to other perspectives; and
- not making adverse assumptions about the ideas or work of another member or organization.

We were reminded that this diverse committee has successfully worked through and agreed on many items: appointing the BBEST; hiring and funding facilitators; and appointing a report subcommittee.

Members expressed concerns about balance in the process. Several people hoped that the committee would look at the whole picture of the basin and avoid extreme positions or excessive focus on a single issue. Seeking balance also meant: 1) ensuring that an interest would not be ignored because it is held by a few people or is politically unpopular; and 2) not forming coalitions against a particular interest.

We heard concerns about the level of trust between some committee members at this time. The trust issues could arise from varied understanding of the scope of the BBASC process, because of issues external to this process, such as permitting (which might cause some BBASC members to be more cautious in their communications with each other), or because of a disparity in understanding the technical material and regulatory context. Genuine conversation is critical to airing and developing a shared understanding of interest and needs. It also builds trust. Many noted that getting to know each other better can improve trust; this may result from having a shared task and more frequent meetings. Some members acknowledged that tense conversations and difficult decisions lie ahead, but are optimistic that this group has the commitment to work through those decisions.

Members expressed concern that the group has been quiet and reserved in the past. People realize that there are varying levels of understanding of the technical issues and water rights

and permitting rules. However, many expressed their hope that everyone will read the BBEST report in full and ask questions to understand what it means and how the BBASC can use it to develop the recommendations. A better understanding of the technical issues and the scope of the BBASC task may lead to more energized dialog and problem-solving.

Making the Process More Productive

Members expressed their desire to work efficiently and made suggestions about how to address the time constraints faced by this committee:

- understand the BBASC job and what TCEQ will do with the recommendation;
- establish an agreed method for communicating with the BBEST, so stakeholders understand when BBEST members are speaking as individuals or on behalf of the whole BBEST;
- empower all BBASC members to be responsible for the process (consider revisiting the ground rules to ensure they are appropriate for this phase of the process);
- stay focused on what needs to be done and what the end product looks like;
- get members involved on various tasks and consider small-group work; and
- consider requesting an extension to the deadline, if necessary to produce a good report.

Structural Concerns

In most large, representative, consensus-building processes, concerns arise related to time or geographic constraints or constraints associated with organizational structures. Some members worried that the SB3 process does not provide time to adequately study the basin and adequately consider policy issues. Most believe that the BBASC has much to do in a short time and that the process is underfunded. Others noted that this is a particularly large basin geographically, making it difficult for some to attend meetings that are held principally in Waco. Participation by conference call is helpful, but does not enable the committee members to get to know one another. There was some concern about whether the missions of organizations or constituencies represented by committee members would make it difficult to bridge differences. These difficulties can be addressed through careful meeting planning, candor, and opportunities for representatives to meet with their constituencies between meetings.

Appendix 1

Information Needs and Concerns

There was a general sense of trust of the BBEST itself, and of its report. A limited number of BBASC members, however, expressed concern over whether the BBEST report was sound enough science upon which the BBASC can make a recommendation. Even those who expressed confidence in the BBEST report voiced an overwhelming sense that BBASC members needed help to better understand the BBEST report and other technical and legal issues. Without such understanding, people cannot meaningfully participate, may become bored and then lose interest. The following are some of the specific needs and questions we heard.

Technical or scientific

BBEST report

- Understand the complete BBEST environmental flow regime structure. The BBEST must articulate its report in simple terms that people can understand²
- What does BBEST mean when it says “if considered as the only water passing through the stream reach, the environmental flows proposed in this report are likely to be inadequate for long-term maintenance of a sound ecosystem in many cases, the lower river reaches and estuaries in particular” (executive summary, p.iv)?
- Are the BBEST assumptions valid? How confident is BBEST? One member recalled a BBEST member saying that there was limited data on the Brazos.
- Does the report say we need water all the time for the system to survive?
- How did BBEST report take into account releases from reservoirs? Concern was expressed that about using only monthly data.
- Desire to hear Science Advisory Committee and TPWD review of the BBEST report.
- Translate the BBEST report to real life: what do the various flows look like?
- Understand a BBEST member’s statement (during a presentation) that data looks the same before and after reservoirs were built?
- Understand the relevance of the BBEST report.

Using and Understanding WAMs & other modeling

- What types of analysis must be done to develop the BBASC environmental flow standards? Specifically, do we need to do more modeling to understand the impact of the BBEST environmental flow regime on existing and future projects/human need? If so, what projects should be modeled, and what is the baseline model?
- Use FRAT to understand impacts (if there is funding for FRAT modeling).
- What are the assumptions underlying the models?
- Understand the purpose of modeling: models are a projection of possibilities, not an absolute.
- Understand whether existing permits over-allocate the basin’s water, and if so, whether we will be able to supply environmental flows

² One member expressed the level of understanding to be analogous to that of a patient’s need to understand what the doctor knows in sufficient detail to make informed decisions about her care.

Other

- How do low flows impact algal blooms?
- Water needs from Water for Texas, and information on how to balance
- How does the BBASC consider the issue of whether its decisions impact groundwater?
- BRA system operations permit application and its relation to the BBASC process.
- Potential impacts of the five species of freshwater mussels that were considered, but not listed, as endangered, by U.S. Fish and Wildlife Service. Could this impact the BBASC process in any way? What if USFWS is sued for not listing? .
- What are the challenges people have regionally along the river?

Legal or policy

Implementation and Enforcement

- How will the BBASC report be used? What is the process after BBASCs' report is finished?
- How will these standards be implemented and enforced?
- Which permits are subject to the standard? Will the system operations permit be subject to the environmental flow standards?
- What will be the impact of the environmental flow standards on existing water rights?

Legal Context - Water Law and SB3

- Will the recent Texas Supreme Court decision in Edwards Aquifer Authority vs. Day impact this BBASC's work?
- Primer on surface water law (i.e. understanding water rights in the system and the "pecking order," including the effects and impact on environmental flow).
- What is a water right holder's legal ownership interest in water (in a lake, in the river)?

What is the BBASC task?

- What should BBASC's product/ report look like? What is the end result? What does TCEQ want in the recommendation?
- Need a two-page summary of where we are going.
- Need terminology in layman's terms.