

**Guadalupe, San Antonio, Mission, and Aransas Rivers
and Mission, Copano, Aransas, and San Antonio Bays
Basin and Bay Area Stakeholder Committee (BBASC)**

Thursday, April 12th, 2012 at 10:00 am

GBRA River Annex

905 Nolan Street,

Seguin, TX

MINUTES

Members Present: Suzanne Scott, Chair; Dianne Wassenich, Vice Chair; Bill Braden; Tyson Broad; Jack Campbell; Rick Illgner (for Karl Dreher); Jennifer Ellis; Chris Hale; Jerry James; Mike Mecke; Con Mims; James Lee Murphy; Mike Peters; Steve Clouse (for Robert Puente); Doris Cooksey (for Kim Stoker); Walter Womack; Jennifer Youngblood.

Call to order and Introductions

Chair Suzanne Scott called the meeting to order.

Public Comment

There was no public comment at this time.

Discussion and Agreement on Agenda

The members reviewed and approved the agenda as drafted.

Approval of Minutes from February 16, 2012

The minutes from the February 16, 2012 BBASC meeting were approved with a slight formatting revision.

**TCEQ Presentation on Proposed Rules for Environmental Flows Standards
- Kathy Alexander and Kellye Rila, TCEQ**

Kellye Rila, Water Rights Division Director for the TCEQ, provided a brief update on new division happenings. She discussed the legislative mandate to evaluate the need for a watermaster, currently in progress for the Brazos and Colorado River basins.

Regarding the recent proposed rules for environmental flow standards, Kathy Alexander, TCEQ, explained that this Q&A session was being held in order to inform the stakeholders and public about TCEQ's development of the proposed rules, to allow a better understanding of the process, and to assist those submitting comments on the proposed rules. Ms. Rila and Ms. Alexander discussed the following points:

- The balancing analyses required by statute are not intended as a finding that water is available for specific projects. When applications for projects are evaluated, water availability is based on specific facts in those applications.
- TCEQ staff based the analysis on results from the water availability models (WAM) used for water availability determinations for new permits or amendments that request a new appropriation of water.

- The TCEQ WAM used for new permits considers all water rights at the full authorized amounts in the permits, reservoirs are included at their permitted capacities, and return flows are not included.
- TCEQ staff also performed water quality analyses to evaluate relationships between streamflow and the water quality parameters identified by the science team and to look for trends and criteria excursions.
- In the Guadalupe and San Antonio Basins, the selected scenario for the balancing analysis is based on a hypothetical diversion of a large amount of water from the Guadalupe River Basin.
- Staff looked at recommendations from the stakeholders, science and the balancing analysis required by statute.
- At some locations, the stakeholders recommended pulse flows with durations in excess of one month. There was little site-specific information supporting specific high flow pulses, including pulses with long durations. The base flow standards and pulse flow values were adjusted based on the balancing analysis.
- Overbank flows result from naturally occurring large rainfall events, which will likely continue to occur.
- Application of the freshwater inflow standards, as proposed in the rule, did not impact water availability for the scenario.
- Regarding how the freshwater inflow standards will be implemented, new permits or amendments to increase the amount of water stored, taken, or diverted shall not impair the frequency at which specific inflow regime levels occur by more than 10% from the baseline values in the TCEQWAMs in effect at the time the first application for a water right permit or amendment subject to the rule is considered.
- Regarding the 10% dedication recommended by the stakeholders, HB 3/SB 3 contemplates that environmental flow standards will be protective of the environment. The proposed standards are protective of the environment. Requiring this dedication would encourage applicants for new appropriations to request more water than they need.

Ms. Rila noted that the proposed standards are not solely based on science alone but a balancing of human and other needs with the science recommendations per statute.

Member Con Mims stated that the BBASC process took a long time and it was a difficult process that was successful in incorporating, by consensus, several factors (including the BBASC's recommendation of a 10% dedication to return flows), in accordance with statute. In light of this he asked why doesn't TCEQ recognize this and support the stakeholder's position. Ms. Rila responded by stating that the TCEQ recognized the work of the BBASC and did consider their recommendations; however, the TCEQ was also required to balance human and other needs. She noted that the proposed rules will be published in the Texas Register and the BBASC and others can submit their comments which the TCEQ will consider. The commissioners also asked that staff accept comments on the BBASC report as well.

Chair Scott asked why the TCEQ's model does not incorporate return flows which can be diverted by the permit holder, and why these can't be passed for downstream benefit. Ms. Alexander responded that the model that was used by TCEQ in developing the

proposed rules is the same model used for water rights permitting and it includes water rights permitting assumptions. She also discussed the need to protect senior water rights and stated that return flows are unpredictable. Regarding the science used in rule development she stated that the BBEST recommendations were considered, but any new science developed through the work plan process would be considered as the rules are revisited.

Vice Chair Wassenich asked if the balancing performed by the BBASC was adequate. Ms. Rila stated that different assumptions were applied, but a response to the balancing questions could be provided through the comment process.

Member Tyson Broad asked how the TCEQ determined that the proposed standards were protective of a sound ecological environment. Ms. Alexander replied that the proposed standards would only apply to a small number of new appropriations and that in their evaluation there was no evidence that the proposed standards would not be protective.

Member Con Mims asked if water is only available 10% of the time why will TCEQ not grant a permit. Ms. Rila responded that TCEQ needs to consider reliability. Mr. Mims stated that the BBASC process was very intense and detailed that considered several factors in accordance with the SB3 statute. He asked why the TCEQ didn't recognize this and support the BBASC position/recommendations. Ms. Rila responded that the TCEQ does recognize the work of the BBASC but noted that the TCEQ was required to balance, per the statute. She noted that any comments submitted will also be considered.

Alternate Steve Clouse asked if the BBASC had made errors in their recommendations. Ms. Rila responded that the BBASC had the ability to look at multiple sources of information, but at the end of the day the TCEQ must utilize WAM run 3. She noted that these standards are for environmental conditions that will be placed in water right permits to replace the current default methodology.

Chair Scott asked if new information from strategies identified in the work plan indicates more water would be needed, you would want to preserve the water that is left and issue lesser permits to accommodate any new info that might indicate the standards should be modified. Ms. Rila responded that the basin is currently over appropriated, but you can provide comments on this in the comment period.

Vice Chair Wassenich asked why the TCEQ did not accept the balancing as recommended by the BBASC. Ms. Rila responded that the TCEQ evaluation was included different assumptions and could respond further through the comment process.

Member Jack Campbell questioned a previous statement that TCEQ evaluated the recommendations as they have always done in the permitting process. He stated that SB3 was designed to change the way things have been done and that the BBASC recommendations considered this. Ms. Rila responded that the TCEQ does perform the

same analysis used in permitting, but also in consideration of environmental flow standards. She stated that it is the implementation of standards which is new to TCEQ.

Mr. Clouse stated that it would have benefitted the BBASC to have had all of this information early on in the process.

Mr. Broad asked if the TCEQ is basing impacts of the BBEST recommendations on unappropriated model that is located at xx location, then looking at a diversion of 135,000 acre-feet. He asked where that number came from. Ms. Rila responded that the TCEQ needed a number that would trigger pulses, and they also used a high diversion rate. This might reflect a new application but it doesn't represent an actual project. Ms. Alexander indicated that the TCEQ didn't model a specific project but looked only at impacts on remaining unappropriated water.

Chair Scott asked if the BBASC recognized human needs in their recommendations, why would the TCEQ not accept this. Member Jennifer Ellis stated that the BBASC made great efforts that included balancing and a similar review that occurs in permitting. She stated that she did not understand why the TCEQ chose a point far upstream and a diversion rate that is so large compared to the balancing of the BBASC. Ms. Alexander responded that those types of comments were welcome through the comment process.

Member Jennifer Youngblood asked if the TCEQ believed that the proposed standards are protective of a sound ecological environment. Ms. Rila responded that this is an adaptive process that included market strategies and that the TCEQ's Executive Director felt that the TCEQ did its job per statute.

Ms. Alexander explained the rule process schedule is as follows:

April 13, 2012 – publication in the Texas Register

May 8, 2012 – public hearing

April 13 – May 14, 2012 – public comment period

August 8, 2012 – anticipated adoption date (date subject to change)

The members discussed whether to submit comments on the proposed rule as a BBASC and/or as individuals. The members agreed to allow the chair to develop draft comments to be reviewed by the full BBASC at the next meeting. Members were also encouraged to submit comments as individuals.

Review and Discussion of Draft Work Plan for Adaptive Management

The members discussed the work plan drafts which consist of the prioritized and integrated work plan strategies. Members reviewed these individual work plan recommendations, as well as comments provided by the members, making revisions as needed. The members agreed to establish a 5 year review cycle which will begin on September 1, 2012, with new BBASC/BBEST recommendations to be developed by September 1, 2017. The work plan will include a reference that some scientific group, i.e. BBEST, will be necessary to provide input to the BBASC as part of their re-evaluation of the adopted environmental flow standards. The members will review the changes discussed and will take up for consideration and approval the work plan at the May BBASC meeting.

Discuss Future Meeting Dates, Times and Locations

The next BBASC meeting will be held on May 10, 2012 at SAWS.

Public Comment

There was no public comment at this time.

Adjourn