

Clearwater Underground Water Conservation District Meeting
700 Kennedy Court
Belton, Texas
Thursday, August 12, 2015
Minutes

The Clearwater Underground Water Conservation District (CUWCD) held a board meeting on Wednesday, August 12, 2015 at 1:30 p.m. at the Clearwater UWCD Building, located at 700 Kennedy Court, Belton, Texas.

Board Members Present:

Leland Gersbach, President
Wallace Biskup, Vice President
Judy Parker, Secretary
David Cole, Director
Gary Young, Director

Public Advisory Committee:

Henry Bunke
Bill Schumann

Staff:

Dirk Aaron
Shelly Chapman(absent)

Guests:

Mike Keester – LBG-Guyton
Jeff Straub-City of Troy
Joe Pellooski
Tim Dale-Intera
Luke Dial
Jill Wright
J. Johnson
Mike Gershon-Lloyd Gosselink (Via Phone)

Blake Stapp – LTMS, PC
Ann Smith
Lonnie Edwards
Nan Kinzler
Stacy Richmond
Jessica Law
Connie Johnson

William Gamblin-Apex Geo
Cullen Smith
David Hill
Jennifer Dial
Lynda Pellooski
Scott Law
Anthony Beach

Board meeting convened with President, Leland Gersbach, at 1:34 p.m.

1. Invocation and Pledge of Allegiance:

Vice President, Wallace Biskup gave the invocation.
Secretary, Judy Parker led the Pledge of Allegiance.

2. Public Comments:

None

3. Approve minutes of the July 12, 2015 Board Meeting and Workshop.

Director, Gary Young moved to approve the minutes of the July 12, 2015 Board Meeting and Workshop.
Secretary, Judy Parker seconded the motion. **Motion carried 5-0.**

4. Discuss, consider and take action if necessary to accept the monthly financial report for July 2015 as presented.

Secretary, Judy Parker moved to accept the monthly financial report for July 2015 as presented. Director, David Cole seconded the motion. **Motion carried 5-0.**

5. Discuss, consider and take action if necessary to accept the monthly Investment Fund account report as presented.

Director, David Cole moved to accept the monthly investment fund account as presented. Director, Gary Young seconded the motion. **Motion carried 5-0.**

6. Discuss, consider and take appropriate action if necessary to accept the Quarterly Deferred Compensation Employee Retirement Program account report as presented.

Vice President, Wallace Biskup moved to accept the Quarterly Deferred Compensation Employee Retirement Program account report as presented. Secretary, Judy Parker seconded the motion. **Motion carried 5-0.**

President, Leland Gersbach, moved on to Agenda Item #8 at this time and stated he would return to Item #7 after the Public Hearings are concluded.

President, Leland Gersbach opened the Public Hearing at 1:38 p.m.

President, Leland Gersbach called to order the hearing on the applications described under Agenda Items #8 a-b-c. These applications were filed by Scott & Jessica Law, Roy Zingelmann and the City of Troy. For the record, it is August 12, 2015; Leland officially opened the hearing a 1:38 p.m. and reminded everyone that the hearing is recorded by audiotape as required by statute and district rules. As the President of the District's Board of Directors, Leland served as the Presiding Officer of the hearing. The quorum of the Board of Directors also officiate and participate in ruling on the applications before us today.

The Law's request is to attain a combination Drilling/Operating Permit for 5.4 ac-ft per year on their proposed nine wells to withdraw from the Edwards BFZ Aquifer, for domestic use in a proposed rural subdivision to be known as Salado Country Estates. Mr. Zingelmann submitted an application for a combination Drilling/Operating permit on his minor subdivision of a tract of land being 2.794 acre feet, for domestic use from the Edwards BFZ Aquifer. The City of Troy requested a drilling permit for a well to be drilled to the Lower (Hosston Layer) Trinity Aquifer, and states they anticipate a proposed amount 250 ac-ft per year once the well is completed.

Leland reviewed the procedures that apply to the hearing and Board's potential action on the applications. Leland announced the hearing has been properly noticed, pursuant to statute and the District Rules. Notice of today's hearing was posted at our District Headquarters, District Website and at the District Courthouse on Friday, July 31, 2015 @ 11:59 a.m., giving the board at least 10 days' notice. Leland reviewed the procedures for the Public Hearing to include proper posting and notification of the Public Hearing. President Gersbach noted that all administrative requirements had been met.

General Manager, Dirk Aaron, introduced the participating parties that signed up to speak for or against the submitted permits. David Hill, Ann Brown Smith, J. Johnson, Joseph Pelloski, Jennifer Dial, and Jeff Straub, all signed up to speak. Also present is the District's Hydro-geologist, Mike Keester – LBG-Guyton, and the District's attorney, Mike Gershon – Lloyd Gosselink Attorneys at Law (present via phone line).

The District requires that each applicant provide notice to adjacent landowners and well owners located within ¼ mile of the applicant. Leland Gersbach announced that this is only a courtesy. He stated we are not required to provide this courtesy notice by law. He affirmed, as long as we meet our 10-day notice requirement at the Clerk's office, District office, and by mailing to the applicant and folks who request it under our rules, we are in compliance and can move forward with the hearing.

Leland reminded the applicants that the burden of proof is on them to establish that they are entitled to have their permit application granted. Leland reported, as set forth in Chapter 36 of the Texas Groundwater Water Code and the District's Rules, the permit application must meet certain elements to be approved, elements that our General Manager will cover in his review and recommendation and that he or other members of the Board will ask questions on.

Leland reviewed the order of testimony appearances on all three applications. He reviewed who was present as expert witnesses for the District and the Applicants. He asked for any member of the public that wished to either (1) provide public comment or (2) protest any of the three applications to speak up. Do we have anyone that is interested in making a comment but who doesn't want to be a part of the hearing? (none came forward for public comment).

Leland announced that the Board can only rely upon testimony and other information presented by the applicant, applicant's consultants, CUWCD General Manager, CUWCD's consultants and a party that qualifies under the Water Code and District Rule 8.10. He further stated that District Rule 8.10.12 provides that any person who wishes to protest an application must submit a contested case hearing request either before the hearing or be present at today's hearing. He asked all who wanted to participate as an official party, to explain to him and the Board how you meet the legal standard established in the Texas Groundwater Water Code and our District Rules. (see attached sign in sheet) All parties who signed in qualified as affected parties and attained party status by being adjacent landowners and well owners in ¼ mile of the proposed well locations. All parties, District GM, Consultants, legal counsel (via phone) were sworn in at this time.

Testimony on agenda item 8a was heard:

- a) ***Discuss, consider and take action if necessary on the application from Scott and Jessica Law for a combination drilling/operating permit on 105.74 acre tract for nine (N1-15-001P thru N1-15-009P) wells for domestic purposes each with an 1 ¼ column pipe and maximum of 17gpm for a total of 5.4 acre feet/year (each well at .6 acre feet per year) or 1,759,595 gallons per year.***

First, Nan Kinzler laid out and reviewed the application for the Law's and the proposed Salado Country Estates to the board. Next, Timothy Dale, Hydrogeologist with Intera, laid out the results of the required Hydrogeological Report and Water Availability required by TCEQ and Bell County Commissioners Court for rural subdivision proposed plats. He also addressed questions related to the concerns of how the proposed wells will affect the surface flow in Salado Creek adjacent to the Law's proposed wells. Mr. Dale also answered questions from the Board members. Mike Keester, Senior Hydrogeologist with LBG-Guyton, reviewed the Hydrogeological Report and provided recommendation to the board based on his analysis of the potential impact on other well owners and the merits of the application. Mr. Keester also answered questions from the board and recommended that the application be approved with classification of the wells to be N2 wells rather than N1 wells, thus requiring meters, monthly reporting, observation ports and static water level measurements quarterly by district staff. Dirk Aaron, CUWCD Manager, commented on the application's administrative status, their needs assessment, Edwards Aquifer status report under the DFC, proposed drilling/operating permit, proposed provisions and concurred with the special recommendations made by Mike Keester to the Board.

The Board members asked the applicants if metering, reporting and static water level measurements would be a problem. Scott Law reported no problem with these requirements. He stated he wanted to conserve and protect water and be a good neighbor.

Third Party testimony was from David Hill, J. Johnson, and Ann Brown Smith. They expressed concern that the stream flow would be affected. Mr. Keester and Mr. Dale were asked again, if the wells would impact the stream. They did state that wells improperly completed in just the top of the Edwards formation could be affected.

Leland stated this does not conclude the evidentiary portion of the Law's (Salado Country Estates) application for a Combination Drilling/Operating Permit of .6 ac-ft/yr/well thus 5.4 ac-ft total. The affected parties would like to have more time to prepare evidence of concern, then pursuant to Rule 8.10.19, he left the evidentiary record of this application open and will continue the hearing on this application on September 9, 2015 at 1:30 pm at the District Headquarters. This will allow the opposing parties time for submittal of additional evidence.

Leland called for a 5 minute Break

Leland reconvened the hearing at 4:02 p.m.

Leland announced at the recommendation of the GM, Dirk Aaron that we move to **Agenda item 8c**, the City of Troy application for a drilling permit, proposed Well #2 (N2-15-002P), with up to an 6 inch column pipe, up to 400 gpm for 250 ac-ft/year or 81,462,750 from the Lower Trinity Aquifer for public water supply use. Leland announced that he agrees and changed the order of the application and announced the board will address the City of Troy application before the Zingelmann application.

Testimony on agenda item 8c was heard:

- c) ***Discuss, consider and take action if necessary on an application from City of Troy for a drilling permit, proposed Well #2 (N2-15-002P), with up to an 6 inch column pipe, up to 400 gpm for 250 ac-ft/year or 81,462,750 from the Lower Trinity Aquifer for public water supply use.***

Leland Gersbach reviewed the particulars of this application. Dirk Aaron introduced Tony Beach, the City of Troy's consulting engineer and William Gamblin, engineer with Apex Geoscience. The Troy City Manager, Jeff Straub, had to leave and will not be available to testify. Mike Keester and Mike Gershon (via phone) are present to testify for the District.

William Gamblin recapped the aspects of the initial well design, particulars of the application, needs assessment, and projected water use. Judy Parker commented that the projections are more than what the state water plan is looking at. Tony Beach responded that the City of Troy had already notified Region G and the state water plan has already been amended for this project. He also stated that this is a TWDB funded project. Dirk Aaron clarified that this is not an approved "Swift" funded project, but an application for an interest loan at TWDB is still the City's plan, based on what Mr. Beach stated.

Mike Keester presented his analysis based on his research and findings. Director, David Cole, made some observations and comments based on the testimony provided.

Dirk Aaron explained that David Cole addressed some of the same concerns that he has. Dirk also explained that the applicant has met the criteria set forth by the Board and recommends approving the drilling application as requested with the **special provision** laid out in his and Mike Keester's reports. Dirk discussed the special provision that would apply. Keester and Aaron, both, in their separate reports, report that the City of Troy needs to rectify the population projects which are in conflict with those of the Region G State Water Planning Group. They both expressed concern that the City's water loss in 2013 and 2014 warrants waste thus this should be addressed before the board can approve an operating permit once the well is complete.

Secretary, Judy Parker moved to approve the drilling permit as requested with the special provision set forth by the Board. Vice President, Wallace Biskup seconded the motion. **Motion carried 5-0.**

Testimony on agenda item 8b was heard:

b) Discuss, consider and take action if necessary on the application from Roy Zingelmann for a combination drilling/operating permit on 2.794 acre tract for one (N1-15-010P) well for domestic purposes with a 1 ¼ inch column pipe and maximum of 17 gpm for a total of .6 acre feet per year or 195,511 gallons per year.

Dirk informed the Board that the Applicant and Tommy Lovelace were not available to appear at this time and asked that Dirk present the application on their behalf. General Manager, Dirk Aaron, presented the facts and related information associated with the permit application for an N1 well. Dirk informed the Board that all 12 criteria have been met.

Based on Mike Keester and Dirk Aaron's concurrence, there is no measurable effect on the aquifer or the surrounding wells.

Dirk Aaron recommended the Board approve the .6 acre feet/year with special provisions. Dirk recommended changing the well from an N1 well to an N2 well which requires the applicant to report monthly usage to the District and/or equip the well to allow clear access into the well for quarterly water level measurements by the District Staff as needed.

Judy Parker asked if Mr. Zingelmann understands that he is going from an exempt well to a permitted well. Dirk explained that he has repeated this information to Mr. Zingelmann several times.

Director, Gary Young moved to approve with **N2 classification**, and require metering and monthly production and special provisions to include observation tube with trimmie pipe to allow for quarterly monitoring by District Staff. Vice President, Wallace Biskup seconded the motion. **Motion carried 5-0.**

Leland stated that the Public Hearing will be continued and will reconvene on September 9th, 1:30 pm, to review and hear additional evidence on the Law's application.

Leland stated it is 5:17 p.m. and we will go back to agenda item #7.

- 7. Discuss, consider and take appropriate action if necessary to approve the FY15 line item budget amendments as requested.*

No budget amendments requested. No action taken.

9. Discuss, consider and take appropriate action if necessary to select the Auditing Firm based on committee report and recommendation of the SOQ's submitted for Auditing Services.

Dirk reviewed the information from the committee and is recommending the Board continue with Alton Thiele as the District's auditing firm. This firm is familiar with the District's operation and also is the auditing firm for other Water Districts.

Secretary, Judy Parker moved to retain Alton Thiele as the District's auditing firm. Vice President, Wallace Biskup seconded the motion. **Motion carried 5-0.**

10. Discuss, consider and take appropriate action if necessary to set the preliminary tax rate for tax year 2015 on proposed budget FY16.

Board President Leland Gersbach opened the discussion and stated he feels that due to an increase in projected revenue based on appraisals, he would like the district to lower the tax rate to .00395 from the current .0040. Judy asked questions on how much the impact would be on the proposed budget. Dirk Aaron stated it would be approximately \$8,277.00 in reduced revenue and the total projected tax income would be \$653,906.00 from Tax year 2015. Members asked questions about why the increase of tax income had been so high and Leland confirmed with the County Commissioner that the primary reason is because of the tax value of the Panda Power Plants in Temple.

Secretary, Judy Parker moved to set the preliminary tax rate for tax year 2015 on the proposed budget for FY16. Director, Gary Young seconded the motion. **Motion carried 5-0.**

11. Discuss, consider and take appropriate action if necessary to set date for adoption of the FY16 budget

Leland Gersbach enquired if Monday, August 24th, would work for the Board as the date to adopt the FY16 budget. Director, David Cole moved to set Monday, August 24th as the date to adopt the FY16 Budget. Vice President, Wallace Biskup seconded the motion. **Motion carried 5-0.**

12. Discuss, consider and take action if necessary to set the date for the public hearing and adoption of the tax rate for tax year 2015.

Leland Gersbach asked for a motion to set the Public Hearing and adopt the tax rate for the 2015 tax year for Monday, August 24th. Secretary, Judy Parker, moved to set the Public Hearing and adoption of tax rate for the 2015 tax year for Monday, August 24th. Director, David Cole seconded the motion. **Motion carried 5-0.**

13. Discuss, consider and take action if necessary to set the date for the 15th Annual Bell County Water Symposium.

Dirk presented the date of November 19th for the Annual Water Symposium. Vice President, Wallace Biskup moved to set Thursday, November 19th as the date for the Annual Water Symposium. Director, David Cole seconded the motion. **Motion carried 5-0.**

14. General Manager's report concerning office management and staffing related to District Management Plan.

15. Receive monthly report and possible consideration and Board action on the following:

a. Drought Status Report and/or Aquifer Status Report

b. Education Outreach Update

c. Monitoring wells

d. Rainfall Report

e. Well registration

f. Aquifer Status Report and Non-exempt Monthly well production

(Copies of the Monthly Staff Reports were given to the Board Members to review. No action required. Informational items only.)

16. Public Advisory Committee comments.³

None

17. Director comments³

None

18. Discuss agenda items for next meeting.

Continue the Public Hearing on the Laws application for 9 N1 wells.

Public Hearings for Central Texas WSC' application for an operating permit on the Doc Curb well.


Drilling extension for Dean Mikeska.

19. Set time and place of next meeting.

August 24, 2015, 1:30 p.m., Public Hearing to review the preliminary tax rate for FY16, set the FY16 budget and set the final tax rate for tax year 2015, by resolution.

20. Adjourn.

Meeting adjourned with President, Leland Gersbach at 6:02 p.m.



Leland Gersbach, President
or Wallace Biskup, Vice President

ATTEST:



JUDY PARKER, Secretary

(A compact disc of this meeting is available upon request.)