



Edwards Aquifer Authority

900 E. Quincy
San Antonio, TX 78215
EdwardsAquifer.org

Meeting Minutes Board of Directors

Tuesday, September 10, 2019

3:00 PM

EAA Board Room

A. Call to Order – Roll Call – Pledge of Allegiance.

Chairman Buckner called the meeting to order at 3:11 p.m.

Present: 15 - Chairman Luana Buckner, Director Deborah Carington, Treasurer Ron Ellis, Director Rader Gilleland, Director Don Laffere, Director Gary Middleton, Director Byron Miller, Director Carol Patterson, Director Abe Salinas, Director Rachel Sanborn, Director Pat Stroka, Secretary Enrique Valdivia, Director Clark Ward, Director Scott Yanta and Vice Chairman Ben Youngblood

Absent: 2 - Director Kathleen Krueger and Director Ron Walton

B. Public comment.

There were no citizens who requested to address the board.

C. General Manager's announcements and reports.

C.1

- Staffing Items of Interest (anniversaries, new hires)
- Recent Activities/Events (reports on conferences attended, meetings held, etc.)
- Legislative Activity
- Upcoming Activities/Events (conferences, meetings, etc.)
- Operational Announcements (schedule changes, program updates, etc.)
- Recent Activities of the Edwards Aquifer Habitat Conservation Program
- Aquifer Conditions

Mr. Roland Ruiz, General Manager, made the following announcements:

- *Ms. Destiny Acosta was hired as an Accounts Receivable Associate for Finance.*
- *Ms. Stephanie Rosendahl was hired as a Systems Administrator for Information Technology.*
- *A meeting with philanthropist John "Chico" Newman resulted in a gift of \$25,000 from the John and Florence Newman Foundation to the Edwards Aquifer Conservancy for the conceptual design work of the potential Field Research Observatory and the purchase of two rain/weather stations.*
- *The work session would be held September 13 & 14 in Boerne at the Bevy Hotel. In directors' folders was an information packet with work session details.*
- *EAA staff scheduled three public hearings on the proposed 2020 budget: Wednesday, October 9, at 6:00 p.m. in the EAA Board Room; Monday, October 14, at 2:00 p.m. at the San Marcos Activity Center; and Tuesday, October 15, at 10:00 a.m. at the Hondo Community Center. After today's board meeting, the proposed budget would be available on the website.*
- *Mr. Paul Bertetti, Director of Aquifer Science, briefed the board on current aquifer conditions.*

D. Treasurer's Report**D.1**

Receive report from EAA staff on the unaudited financial statements for July 2019.

Treasurer Ellis presented the unaudited financial statements for July 2019.

E. Board Reports**E.1**

Receive report from Director Gary Middleton, South Central Texas Water Advisory Committee (SCTWAC) representative to the board, regarding downstream water conditions of the Guadalupe River Basin and current activities and issues of interest to SCTWAC.

Director Gary Middleton, South Central Texas Water Advisory Committee (SCTWAC) representative to the board, briefed the board regarding downstream water conditions, and noted that the flow in the river in Victoria has maintained a healthy balance this summer, which was not usually the case. He also noted that it has been dry.

F. Consent Agenda**F.1 Approval of previous board meeting minutes
- Regular Board Meeting - August 13, 2019**

*Approval of previous board meeting minutes
- Regular Board Meeting - August 13, 2019*

F.2 Consider recommendation from the Permits/Enforcement Committee to approve ASR springflow protection program forbearance agreements with Box K, Limited; Lilla Lee Rose; Sylvia C. Binford; Binford Farms, LLC; Michael Edward Echtle; Kurt Eric Kunze; and Craig K. Garnett and Melissa N. Garnett, for the Aquifer Storage and Recovery Forbearance Program, in support of the Edwards Aquifer Habitat Conservation Plan, in the total amount of \$1,324,064.70.

Adopt Resolution and Order No. 09-19-945 of the Edwards Aquifer Authority Board of Directors to approve springflow protection program forbearance agreements with the permit holders listed, to the EAA for the Aquifer Storage and Recovery Program in support of the Edwards Aquifer Habitat Conservation Plan and authorize the General Manager to execute the agreements.

[Attached and made a part of these minutes.]

F.3 Consider recommendation from the Permits/Enforcement Committee to approve a Voluntary Irrigation Suspension Program Option forbearance agreement with Craig K. Garnett and Melissa N. Garnett, for Edwards groundwater withdrawal rights in the total amount of not less than \$4,860.00 and not to exceed \$19,260.00 for the Voluntary Irrigation Suspension Program Option in support of the Edwards Aquifer Habitat Conservation Plan.

Approve a VISPO forbearance agreement for permitted Edwards groundwater rights between the EAA and Craig K. Garnett and Melissa N. Garnett, in the total amount of not less than \$4,860.00, and not to exceed \$19,260.00, for the Voluntary Irrigation Suspension Program Option in support of the Edwards Aquifer Habitat Conservation Plan and authorizing the General Manager to execute the Agreement.

- F.4** Consider the recommendation the Aquifer Management and Planning Committee to approve amendments to Interlocal Cooperative Contract No. 17-837-EX with New Braunfels Utilities for the development and use of an aquifer storage and recovery project.

Approve the First Amended Interlocal Cooperation Contract # 17-837-EX with New Braunfels Utilities for the development and use of an aquifer storage and recovery project.

- F.5** Consider recommendation from the Finance/Administrative Committee to approve payment to Kemp Smith for legal services for July 2019.

Approve payment to Kemp Smith in the amount of \$77,880.56 for legal services for July 2019.

A motion was made by Director Stroka, seconded by Secretary Valdivia, to approve the consent agenda. The motion passed viva voce.

G. Individual Consideration

- G.4 Consider the recommendation the Aquifer Management and Planning Committee to approve a renewal and extension of an Interlocal Cooperation Contract with the Evergreen Underground Water Conservation District to conduct a Precipitation Enhancement Program, in an amount not to exceed \$163,000.**

Item G.4 on the agenda was taken out of order by the board. It was considered after agenda item F.5.

Mr. Javier Hernandez, Special Projects Liaison, briefed the board regarding renewing and extending an Interlocal Cooperation Contract (Contract) with the Evergreen Underground Water Conservation District (EUWCD) to conduct a Precipitation Enhancement Program (PEP) for the year 2019.

Mr. Marc Friberg, Executive Director - External & Regulatory Affairs, briefed the board regarding the contract with the Evergreen Underground Water Conservation District.

A motion was made by Director Stroka, seconded by Director Gilleland, to adopt Resolution and Order No. 09-19-947 of the Edwards Aquifer Authority Board of Directors approving a final, one-year renewal and extension of Interlocal Cooperation Contract No. 15-775-ERA between the EAA and Evergreen Underground Water Conservation District to conduct precipitation enhancement activities, in an amount not to exceed \$163,000, for the period October 1, 2019 through September 30, 2020, and authorize the General Manager to execute the renewal. Director Patterson voted in opposition to the motion. The motion passed viva voce.

[Attached and made a part of these minutes.]

- G.5 Consider recommendation from the Finance/Administrative Committee to approve a contract for special counsel representation regarding certain enforcement matters.**

Item G.5 on the agenda was taken out of order by the board. It was considered after agenda item G.4 and before agenda item G.1.

Mr. Friberg briefed the board regarding engaging special counsel to represent the board in the event such representation is needed regarding certain enforcement matters associated with the "Administrative Penalty" process contained in Section 1.37 of the EAA Act and Chapter 715 of the EAA rules.

A motion was made by Treasurer Ellis, seconded by Director Laffere, to accept the proposal for special counsel representation from Lloyd Gosselink Rochelle & Townsend, P.C. The motion passed viva voce.

- G.1 Consider recommendation from the Research & Technology Committee to approve a joint funding agreement with the United States Geological Survey for data collection services, in an amount not to exceed \$2,621,150.**

A motion was made by Director Patterson, seconded by Treasurer Ellis, to adopt Resolution and Order No. 09-19-946 of the Edwards Aquifer Authority Board of Directors approving Joint Funding Agreement No. 19-945-AMS between the EAA and the United States Geological Survey for data collection services in the total amount of \$2,621,150, of which the EAA contribution will not exceed \$1,875,575, for the period October 1, 2019, through September 30, 2024. The motion passed viva voce.

[Attached and made a part of these minutes.]

- G.2 Consider recommendation from the Permits/Enforcement Committee to approve Proposed Rules related to the following Chapters of the EAA rules: Chapter 702 (Definitions); Chapter 711 (Groundwater Withdrawals), Subchapters C (Exempt Wells), D (Limited Production Wells), E (Groundwater Withdrawal Permits), and L (Administration of Permits).**

Mr. Friberg briefed the board regarding Proposed Rules related to groundwater permitting matters. This proposed rulemaking incorporates amendments to the EAA Act resulting from the passage of HB3656 during the 86th Regular Session of the Texas Legislature and clarifies the EAA's authority to approve conversions of Base Irrigation Groundwater ("BIG") to Unrestricted Irrigation Groundwater and limit the types of actions that qualify for such conversions.

A motion was made by Secretary Valdivia, seconded by Director Laffere, to approve Proposed Rules related to the following Chapters of the EAA rules: Chapter 702 (Definitions); Chapter 711 (Groundwater Withdrawals), Subchapters C (Exempt Wells), D (Limited Production Wells), E (Groundwater Withdrawal Permits), and L (Administration of Permits) and direct the General Manager to take all necessary legal steps to process the Proposed Rules. The motion passed viva voce.

[Attached and made a part of these minutes.]

- G.3 Consider recommendation from the Executive Committee to approve Proposed Rules related to the following Chapters of the EAA rules: Chapter 702 (Definitions); Chapter 707 (Procedure Before the Authority), Suchapters E (Actions on Applications) and F (Procedures for Contested Case Hearings); Chapter 709 (Fees), Subchapters B (Registration Fees), C (Permit Application Fees), D (Aquifer Management Fees), and E (Administrative Fees); Chapter 713 (Water Quality), Subchapters C (Well Construction, Operation, and Maintenance) and D (Well Closures); and Chapter 717 (Enforcement).**

Mr. Friberg briefed the board on the Proposed Rules regarding the implementation of HB 2729, SB 520, the implementation of a portion of HB 3656, and an additional requirement for the construction of exempt Edwards Aquifer wells.

A motion was made by Secretary Valdivia, seconded by Director Laffere, to approve Proposed Rules related to the following Chapters of the EAA rules: Chapter 702 (Definitions); Chapter 707 (Procedure Before the Authority), Suchapters E (Actions on Applications) and F (Procedures for Contested Case Hearings); Chapter 709 (Fees), Subchapters B (Registration Fees), C (Permit Application Fees), D (Aquifer Management Fees), and E (Administrative Fees); Chapter 713 (Water Quality), Subchapters C (Well Construction, Operation, and Maintenance) and D (Well Closures); and Chapter 717 (Enforcement). The motion passed viva voce.

[Attached and made a part of these minutes.]

H. Staff Reports

- H.1 Receive report from EAA staff on the General Manager's 2020 Proposed Operating Budget.**

Ms. Shelly Hendrix, Director/Controller Financial Services, briefed the board regarding highlights of the General Manager's 2020 Proposed Operating Budget.

I. Closed Session.

The Board of Directors of the Edwards Aquifer Authority may go into a closed session under the authority of the Government Code, Chapter 551, Texas Open Meetings Act, to discuss:

Chairman Buckner closed the meeting to the public at 4:05 p.m.

I.1**Closed Session.**

1. Consultation with Attorney - Pending Litigation (§ 551.071)

Active Litigation:

League of United Latin Am. Citizens v. Edwards Aquifer Auth. (5th Cir. decided Aug. 28, 2019)

Uvalde Cty. UWCD v. Edwards Aquifer Auth. (38th Uvalde Cty. filed Jan. 16, 2018)

Gonzales v. Mendez (285th Bexar Cty. filed Sept. 20, 2018; EAA intervened May 8, 2019)

Monitored Litigation:

In re Estate of Eva May Sanderlin (Cty. Ct., Uvalde Cty. filed Jan. 8, 2015)

In re Estate of Watts (Prob. Ct. No. 1, Bexar Cty. filed Jan. 27, 2016)

Stratta v. Harris (5th Cir. filed Nov. 29, 2018)

2. Consultation with Attorney - Attorney/Client Privileged Consultations (§ 551.071)
3. Consultation with Attorney - Settlement Offers (§ 551.071)
4. Deliberations Regarding Real Property (§ 551.072)
5. Deliberations Regarding Personnel Matters (§ 551.074)
6. Deliberations Regarding Security Devices or a Security Audit (§§ 551.076, 551.089)

Chairman Buckner reopened the meeting to the public at 4:40 p.m.

J. Consider recommendation(s) regarding matters discussed in closed session.

A motion was made by Vice-Chairman Youngblood, seconded by Director Laffere, the Board of Directors authorize the General Manager to enter into a settlement agreement with 7-Eleven, Inc. settling the pending enforcement matter styled In the Matter of Underground Storage Tanks at 1815 W. Highway 46, New Braunfels, Texas, Violation No. V104-526, as discussed and outlined by counsel in closed session, and to authorize the General Manager and General Counsel to take all steps necessary to settle, resolve, and close such matter. The motion passed viva voce.

K. Discuss items for future board meeting agendas.

The board did not discuss future meeting agenda items.

L. Adjournment.

There being no further business to discuss, the meeting adjourned at 4:41 p.m.

Enrique P. Valdivia
Secretary, Board of Directors

Jennifer Wong-Esparza
Assistant to Board Secretary