

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 8

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

NOVEMBER 5, 2009

The Board of Directors (the "Board" or "Directors") of Montgomery County Municipal Utility District No. 8 (the "District" or "MCMUD 8") met in special session, jointly with Montgomery County Municipal Utility District No. 9 ("MCMUD 9"), open to the public, on Thursday, November 5, 2009, at 9:00 a.m., at the regular meeting place located at the Walden Yacht Club, 13101 Melville Drive, Montgomery, Texas 77356, inside the boundaries of the District, and the roll was called of the duly constituted officers and members of the Board, to-wit:

Roy McCoy	President
Robert Leasure	Vice President
Daniel L. Davis	Assistant Vice President
Roy Harpold, Jr.	Secretary
Arch Payne	Assistant Secretary

All members of the Board were present. Also attending were Katherine Turner of Municipal Accounts & Consulting ("Bookkeeper"); Erich Peterson, P.E. and Justin Abshire of Jones & Carter, Inc. ("Engineer"); Danny Wright of Hays Utility North Corporation ("Operator"); Ross J. Radcliffe of Johnson Radcliffe Petrov & Bobbitt PLLC ("District's Attorney"); Jim Bustin, Ernie Harris, Judy Sanders, Phil Griffin and Linda Wilson, Board of Directors of MCMUD 9; Clark S. Lord, attorney for MCMUD 9; Mike Methena, engineer for MCMUD 9; Bill Norris and Mike Irlbeck of NRS Consulting Engineers ("NRS"); Michael Booth and Carolyn Ahrens of Booth, Ahrens & Werkenthin, P.C.; and all persons listed on the attached Attendance Roster.

The President, after finding that the notice of the meeting was posted as required by law and determining that a quorum of the Board was present, called the meeting to order and declared it open for such business as may come before it.

1. Public Comment. The President first opened the meeting to public comment. As no public comment was offered, the President directed the Board to proceed with the agenda.
2. Introductions. Director McCoy introduced the members of the Boards and the Consultants, reviewed the history of the water credit project and discussed the need for the Bed and Banks Permit to utilize the amount of effluent discharged into Lake Conroe from the District.
3. Water Credit Feasibility Study.
 - a. Mr. Irlbeck reviewed the Conceptual Engineering Feasibility Assessment Task 2 and responded to questions from the Boards.
 - b. It was reported that the cost of the Water Credit Project is approximately \$90 million less than the District's cost to participate in the San Jacinto River Authority Groundwater Reduction Plan. Upon a **motion** by Director Payne, seconded by Director Davis, after full discussion and with all Directors present

voting aye, the Board authorized the Attorneys to distribute the draft water credit project Task 2 report to the City of Conroe, City Judge and local legislators.

4. Methods for Reducing Groundwater Demands.

- a. Mr. Irlbeck next discussed Brackish Desalination. Mr. Irlbeck reviewed various factors for utilizing these saline groundwater sources as the Districts' alternative water source and indicated that the next step would be preparation of an analysis of such a project. Upon a **motion** by Director Davis, seconded by Director Payne, after full discussion and with all Directors present voting aye, the Board authorized NRS to proceed with analysis of a brackish water project.

5. Executive Session. Pursuant to Chapter 551 of the Texas Government Code, Subchapter D, of the Open Meetings Act, the President called the executive session to order at 11:37 a.m. to discuss matters within the attorney/client privilege and potential litigation related to the LSGCD proposed regulatory plan and the Bed and Banks permit application. As of 12:45 p.m., the President declared the Executive Session was ended and the public session was resumed. No action was taken.

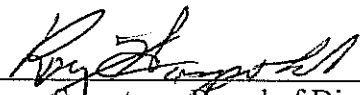
6. Lone Star Groundwater Conservation District ("Lone Star") Regulatory Plan Phase II(B).

- a. Ms. Ahrens reported that she had discussed the Region H plans with Temple McKinnon and indicated the Districts' desire to participate in the next Region H planning meeting to assure inclusion of the Districts' water credit project in the state water plan.
- b. Ms. Ahrens next discussed communications with attorneys for the Lone Star Groundwater Conservation District ("LSGCD") on the proposed regulatory plans. Ms. Ahrens reviewed additional comments she prepared to LSGCD prior to the hearing on November 10, 2009. Upon a **motion** by Director Davis, seconded by Director Harpold, after full discussion and with all Directors present voting aye, the Board authorized the submittal of the comment letter to the LSGCD, a copy of which is attached hereto as Exhibit "A." and to provide copies to various political entities.

7. Executive Session. Pursuant to Chapter 551 of the Texas Government Code, Subchapter D, of the Open Meetings Act, the President called the executive session to order at 1:09 p.m. to discuss matters within the attorney/client privilege related to the Bed & Banks Permit and the Lone Star regulations. As of 1:43 p.m., the President declared the Executive Session was ended and the public session was resumed. No action was taken.

THERE BEING NO FURTHER BUSINESS BEFORE THE BOARD, the meeting was adjourned.

PASSED AND APPROVED this the 9th day of December, 2009.



Secretary, Board of Directors

EXHIBITS:

A - Comment letter to LSGCD

**Montgomery County
Municipal Utility District No. 8**

c/o Johnson Radcliffe Petrov & Bobbitt PLLC
1001 McKinney, Suite 1000
Houston, Texas 77002-6424

**Montgomery County
Municipal Utility District No. 9**

c/o Vinson & Elkins, L.L.P.
1001 Fannin St., Suite 2500
Houston, Texas 77002-6760

November 6, 2009

Lone Star Groundwater Conservation District
Attention: Board of Directors
207 W Phillips St, Suite 300
Conroe, Texas 77301

RE: Additional Comments Of Montgomery County MUDs 8 & 9 Regarding Lone Star Groundwater Conservation District's "District Regulatory Plan Phase II(B)"

Dear Lone Star GCD Board Members:

Montgomery County Municipal Utility Districts Nos. 8&9 ("MUDs 8&9" or "MUDs") submit these comments for inclusion, in the official record for Lone Star Groundwater Conservation District's ("Lone Star") proposed "District Regulatory Plan Phase II(B)," along with comments that MUDs 8&9 submitted to the version of Phase II(B) published on September 8, 2009, and the version published on September 23, 2009. These comments specifically address the rules as they were published with additional changes on October 21, 2009.

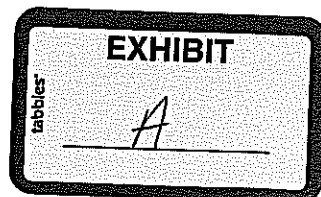
General Comments:

1. Eleventh-hour Reduction in Year-2015 Water Availability is Unjustifiable.

The October 21 proposed rules introduce new reductions that change key planning assumptions for meeting the 2015 Conversion Obligation. To some users who may have no alternative to joining in San Jacinto River Authority's groundwater reduction plan, this difference may not be critical. However, for reasons that include their unique position on the shores of the Walden peninsula, and a geographic limitation on continued robust growth, MUDs 8&9 are exploring options that could save their constituents as much as NINETY MILLION DOLLARS (\$90,000,000) through year-2045 as compared to the San Jacinto River Authority plan. Because MUDs 8&9 are exploring those options, every change in key planning assumptions is critically significant.

Until the latest proposed rules, a large-volume groundwater user ("LVGU") was to plan on groundwater being available to meet 70% of the LVGU's year-2015 water demand. As the MUDs understand the latest proposed rules, the baseline amount for groundwater availability would be the LVGU's maximum permitted amount for 2009. The difference between MUDs 8&9's 2009 permitted production and 2015 anticipated demand is 0.12 MGD average day demand. Instead of converting 30% of demand, the MUDs now must anticipate a 35% adjustment in 2015 demand.

Although MUDs 8&9 appreciate the value of (and advocated for) a process that would allow planning based on a known number, a roll-back that suddenly and unexpectedly deprives



LVGUs of water to meet six years worth of growth is unjustifiable at this critical stage in planning. MUDs 8&9's previous comments proposed a mechanism to certify 2015 Total Qualifying Demand, either based on approved demand projections in the GRP submitted in 2010 or by some specific procedure later within the GRP timeframe. MUDs 8&9 also proposed a "settle-up" mechanism that could be incorporated into the 2015-2045 averaging scenario to correct for any variance between projected and actual 2015 total demand. In this regard, both groundwater reduction and planning certainty can be achieved without sacrificing an LVGU's ability to meet six years of anticipated growth as they were led to expect, with 70% groundwater.

If, instead, it is the case that, averaged across the county, Lone Star must intentionally eliminate an additional six years of growth supply in order to satisfy recent developments in known groundwater availability, that circumstance should be fully aired with the public. Even so, it would not warrant Lone Star's current proposal. Lone Star could achieve its goal of further ratcheting down total groundwater use, *without* disadvantaging MUDs 8&9 and others, if it required a reduction to 70% of the greater of 2009 permitted production or projected 2015 demand, with the allowed average groundwater pumpage through 2045 limited to 70% of the 2009 number.

2. New Definition of "Total Qualifying Demand" Runs Counter to Water Conservation and is Fatally Flawed.

Lone Star's new definition of "Total Qualifying Demand" is contrary to prudent water conservation, and is, indeed, inconsistent in the overall structure of Lone Star's rules. Among other things, please consider the following.

- 2.1 The new definition creates winners and losers based on the amount of excess permitted authority an LVGU has in 2009. To an extent, it *rewards* any entity that currently is over-permitted by allowing more groundwater production.
- 2.2 On the other hand, and as an artifact of previous versions, Phase II(B) also now requires LVGUs to *actually produce and supply* alternative water in the amount of 30% of their 2009 permitted authorization amount even *if provision of that supply is not necessary* to meet the 2015 limitation on groundwater availability. In this regard, Phase II(B) is only revised half-way.
- 2.3 Lone Star's new approach to Total Qualifying Demand also is antithetical to water conservation in this regard. All of Montgomery County would be well-served by reducing overall consumption through every reasonable means of conservation. The incentive for conservation, however, is reduced (albeit, not eliminated) by Phase II(B) in that unmetered *conservation can only reduce the groundwater percentage, but not the 30% alternative water percentage of the required supply portfolio*. Page 6 and Page 7 of the October 21 rules version are, therefore, in direct conflict with each other and with regard to conservation.

- 2.4 The ability to reduce the alternative water supply component of conversion through conservation is CRITICAL to the MUDs, and should be critical to other Montgomery County users as well. That Phase II(B) could require LVGUs to use their most expensive supply when it is unnecessary to do so underscores why Lone Star should focus its efforts on the groundwater resource, rather than on how area water supplies develop alternative supplies and operate their systems.
- 2.5 The proposed changes in defining Total Qualifying Demand to mean 2009 permitted amounts also eliminates any supposed justification for requiring that conservation be metered in order for it to be considered as contributing to *meeting* the 30% required supply. Investing in system improvements to reduce lost and unaccounted for water is just one example of proven and quantifiable water savings that are not capable of being "metered" in a traditional sense. Such investments can be as significant as those for new water supply and the resulting conservation, although perhaps not suitable for an early conversion credit, should be includable in a groundwater reduction plan.

3. More Time is Required to Adapt Planning to Fundamental Changes in the Conversion Obligation.

Although changes in Phase II(B) have been and still are warranted, it would be unconscionable for Lone Star to make such changes without allowing groundwater users an adequate time to adapt. MUDs 8&9's September 8 comments strongly urged Lone Star to clarify the rules and to thereafter provide more time for area groundwater users to investigate their options and prepare their groundwater reduction plans. Clarifications were made, and the proposed deadlines were modestly extended. Additional time is warranted again.

Because the October 21 proposed rules change key planning assumptions for meeting the 2015 Conversion Obligation, and the MUDs anticipate that additional changes will be necessary in those assumptions, the MUDs urge again that a minimum of 6 months be provided between the date of final adoption of rules and the deadline for filing a declaration of intent. A minimum of 12 months should be provided between the date of final adoption and the deadline for filing a groundwater reduction plan. If such very reasonable and still ambitious deadlines are inconvenient for one or another water supply contracting plan, that is unfortunate. However, any such inconvenience does not justify the burden that the current March and October 2010 deadlines place on Lone Star's constituents as a whole.

4. New Provisions Creating a Market for Groundwater Authorizations Should be Broadened.

New language on pages 9 and 10 of Phase II(B) acknowledges that groundwater authorizations may be conveyed. However, it is inappropriate to imply there that only an LVGU may convey such an authorization. If no such implication is intended, then Phase II(B) should be clarified.

Any groundwater user in Montgomery County should have the same opportunity to convey historically authorized groundwater production to willing buyers, so long as it is evidenced that the seller is not shifting its use to a new groundwater authorization. Providing this

opportunity to all such willing buyers and sellers would be a win-win for Montgomery County generally in that conveyance would "retire" 30% of the authorized production.

Specific Comments:

5. Phase II(B) recognizes brackish groundwater as an acceptable alternative water supply, under conditions. Page 6, item 6, however, restricts using groundwater from adjacent counties, generally. The limitations on page 6 should be clarified so that they do not apply to brackish groundwater, or at least do not apply to brackish groundwater in terms that are more restrictive than those included in the definition of "Alternative Water Source."
6. Page 14 requires Safe Harbor GRPs to explain, when requested by Lone Star, why they are unable or unwilling to accept a New LVGU that attempts to join the GRP, set forth the reasons for the denial, and estimate the time, conditions, and circumstances, if any, under which acceptance of the New LVGU may be feasible. This provision should apply uniformly to all LVGUs that come within the provisions of Item 11, Page 9. The required modification can be accomplished by striking the word "new" in each instance where it appears in the Page 14 provision, or by referencing Item 11, Page 9. The modification would not create an unreasonable burden on Safe Harbors and is appropriate to the circumstances of Phase II(B), particularly considering that only Lone Star may initiate the request for explanation.
7. District Review of GRP's, Page 14, Item 1, may inappropriately, and most probably inadvertently, require Lone Star to bring an enforcement action against an LVGU when such an action should be initiated only with the district board's discretion.
8. Also under "District Review of GRPs," Item 1, LVGUs should be given an opportunity to cure deficiencies in their GRP submission. Any deficiency that subjects an LVGU to enforcement should be clearly declared.

In this regard, please consider the following additional language:

"The District will review a GRP or an amended GRP following its submittal and, within 60 days thereafter, either (i) approve the GRP and provide the LVGU or Joint GRP Sponsor with a certificate of same, or (ii) provide the LVGU or Joint GRP Sponsor with a list of deficiencies that must be addressed in order for the GRP to be certified, and a reasonable time period within which such deficiencies must be addressed. Within 60 days following the receipt of additional requested information, the District shall either certify the GRP or, if the GRP is still deficient, the District shall return the GRP to the LVGU, after which the District may declare the LVGU in violation of the requirements of this DRP Phase II(B).

Additional changes would be called for in the Enforcement Section by inserting the word "declared" before references to continuing violations. In other words, any daily penalties that were imposed could commence with day 1 of a "declared continuing violation." Language should be retained elsewhere in the proposed rules that the District may defer

enforcement until the LVGU fails to achieve the Conversion Obligation. Presumably, this means that if, despite failing to adequately cure a deficiency in the GRP an LVGU nevertheless meets its conversion obligation, no penalty would be imposed. Also, the procedures for contesting a declaration or any other finding of deficiency should be protective of due process and fully explained.


9. Page 15 uses the term "special groundwater conservation measures." That term is inappropriately broad for rulemaking.

Incorporation of Previous Comments:

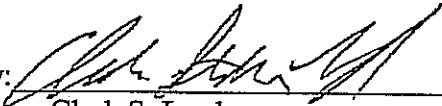
MUDs 8 & 9 greatly appreciate the extent to which their comments to the rules have been taken into consideration in revising Phase II(B). However, to the extent those comments dated September 18, 2009, and October 12, 2009, have not yet been fully addressed, MUDs 8&9 incorporate them again here by reference.

Thank you for this additional opportunity to comment on the Lone Star Groundwater Conservation District's "District Regulatory Plan Phase II(B)."

Respectfully submitted on behalf of the Montgomery County Municipal Utility District No. 8 Board of Directors and the Montgomery County Municipal Utility District No. 9 Board of Directors,

By: 

Ross J. Radcliffe
Johnson Radcliffe Petrov & Bobbitt PLLC
1001 McKinney, Suite 1000
Houston, Texas 77002-6424

By: 

Clark S. Lord
Vinson & Elkins LLP
1001 Fannin St., Suite 2500
Houston, Texas 77002-6760

General Counsel for
Montgomery County MUD No. 8

General Counsel for
Montgomery County MUD No. 9

cc: Montgomery County MUD No. 8 Board of Directors
Montgomery County MUD No. 9 Board of Directors
Carolyn Ahrens