

Clearwater Underground Water Conservation District Meeting
700 Kennedy Court
Belton, TX
Wednesday, May 12, 2021
Minutes

In accordance with Governor Abbott's declaration of the COVID-19 public health threat, action to temporarily suspend certain provisions of the Texas Open Meetings Act, and Executive Order, a quorum of CUWCD's Board of Directors held a regular Board meeting by telephonic conference call and, for redundancy, video conference on Wednesday, May 12, 2021 at 1:30 p.m. The meeting originated from the Clearwater UWCD Building, located at 700 Kennedy Court, Belton, Texas.

Board Members Present:

Leland Gersbach, President, Pct. 1
David Cole, Vice President, At Large
Gary Young, Secretary, Pct. 2
Jody Williams, Director, Pct. 3
Scott Brooks, Director, Pct. 4

Absent:

Staff:

Dirk Aaron, General Manager
Shelly Chapman, Admin. Manager

Guest: (remote & in person)

Cole Ruiz – Lloyd Gosselink
Carson Barr – Potential Intern
Johnny Baird
Casey DeWees
Jay Lindholm – Victory Rock
Maddie Todd – NRS
Don Ferguson – Village of Salado
Robb Ramos
Padraic Dillon
Eric Allmon – TX EnviroLaw

Mike Keester – LRE
Kirk Micheaux – Solona Ranch
Dennis Baird
Tim Fleischer – Village Voice
John Taliaferro – Victory Rock
Vince Clause – Allan Standen LLC
Dr. Yelderman – Baylor Univ
Amber Dankert – Village of Salado
William Gamblin – Gamblin Eng
Scott Cusick – Victory Rock

Ashley Voss-Liebig
Emily DeWees
Marcus Edward
Sandra Blankenship – WCID #1
Kelly Carter
Michael Coggin – Village of Salado
Allan Standen
Christie Justice
Dennis Cartwright

Various Unidentified Phone Numbers:

817-480-9195	254-947-5060	972-922-2628	512-413-1939
214-207-3743	512-818-7930		

Board meeting convened with President, Leland Gersbach 1:35 p.m.

1. *Invocation and Pledge of Allegiance.*

Vice President, David Cole, gave the invocation.
Secretary, Gary Young, led the Pledge of Allegiance.

2. *Public Comment.*

Michael Coggin, Mayor of Salado, wanted to confirm the letter from The Village of Salado in opposition of the Victory Rock permit had been received and would become part of the record. CUWCD General Manager, Dirk Aaron, confirmed the letter was received and commented that each Board member had a copy before them. He noted that the District's Attorney, Cole Ruiz, would address this at the appropriate time.

The District's attorney, Cole Ruiz, commented that the letter would be submitted as public comment but could not be used as evidence in the contested case hearing, if there is one, because Michael and the Village are not considered a party to the case.

Sandra Blankenship expressed her thanks and appreciation to Dirk for his participation and support of the Rainwater Harvesting Workshop conducted by the Bell County Master Gardeners Association.

3. *Approve minutes of the April 14, 2021 Board meeting and Workshop.*

Board members received the minutes of the April 14, 2021 Board meeting and workshop in their Board Packet to review prior to the meeting.

Secretary, Gary Young, moved to approve the minutes of the April 14, 2021 Board meeting and Workshop. Vice President, David Cole, seconded the motion.

Motion carried 5-0.

4. Hold Public hearing on the following well Application:

- a) *Discuss, consider, and take appropriate action if necessary, on the proposed operating permit of 2 ac-ft/yr. for Victory Rock LLC authorizing operating production from an existing (well# N2-20-007G) completed in the Middle Trinity Aquifer at 18.6-gpm for particulate suppression at a mining and crushing aggregate operation located on a 283-acre site at 7170 Solana Ranch Rd West, Jarrell Texas 76537-5008,*
- b) *Discuss, consider, and take appropriate action if necessary, for a proposed combination drilling and operating permit of 30 ac-ft/yr, for Victory Rock LLC authorizing operating production from a new well (# N2-21-002P) completed in the Lower Trinity Aquifer at 20-gpm for particulate suppression, mining and crushing aggregate operation located on a 283-acre site at 7170 Solana Ranch Rd West, Jarrell Texas 76537-5008,*
- c) *Discuss, consider, and take appropriate action if necessary, for a proposed combination drilling and operating permit of .87 ac-ft/yr, for Kelly Carter authorizing production from a new well (N1-21-001P) completed in the Alluvial Aquifer at 5-gpm for domestic use on a 4.01-acre site at 15526 Hawk Lane, Holland TX 76534.*

President, Leland Gersbach, called the public hearing to order at 1:40 p.m.

Leland gave a summary of the 3 applications before the Board. He noted for the recorded that the hearing had been properly noticed according to statute and District rules. Leland instructed anyone wishing to participate in the hearing, in support or protest, to sign up to speak.

As presiding officer, Leland will hear evidence and sworn testimony, and rule on any procedural issues. He stated that the permit application must meet certain elements to be approved. General Manager, Dirk Aaron, will cover these elements in his review and recommendations.

Leland noted that the applications before the Board have undergone administrative, legal, and technical review by District Staff, General Counsel, and Geoscience Consultants and he reviewed the procedures that will apply to the hearing.

4a) Leland opened the hearing related to Victory Rock TX LLC application for an Operating Permit to produce 2 acre-ft from an existing Middle Trinity Well (agenda item 4a) for public comment.

Eric Allmon, representing Marcus Edwards, Johnny Baird, Dennis Baird, Ashley Liebig, Emily and Casey DeWees, and Salado Creek Water and Air Coalition. Eric Allmon requested a contested case hearing on behalf of his clients.

Leland noted that anyone wishing to participate as an official party, will need to establish themselves as an affected person with personal justiciable interest. Cole Ruiz clarified that this portion of the hearing is only to determine "party status."

The following people requested to be a party to the case and established their personal justiciable interest:

Marcus Edwards

Johnny/Sharon Baird (also representing Matthew/Amy Baird)

Dennis Baird

Emily/Casey DeWees

Ashley Liebig

Salado Creek Water and Air Coalition (does meet 3 conditions of being an association).

Eric Allmon (representing counsel – not seeking to personally be a party to the case).

Eric Allmon requested a continuance of the hearing and explained his reasons why. He also made a motion for an independent hearing examiner, 6 weeks to prepare, and allowance for discovery to be presented. He feels there has not been ample time to present a meaningful case and include expert witnesses.

Cole Ruiz asked Dirk to state for the record when the application was first considered by the Board. Dirk stated that this application was first brought to the Board on March 10, 2021. Cole asked Dirk when this hearing was noticed. The hearing was posted at 11:52 on April 29th. The actual agenda for the Board meeting was posted at 1:45 on May 7, 2021.

Cole noted for the record that any party to a contested case has the right to request a contested case hearing with SOAH. That is an option that is available in line with the protestant's due process rights.

Eric Allmon commented that this is a violation of due process to only provide those rights if the person requesting the contract is willing to pay for it.

Cole added that the District provides a contested case option, without going to SOAH, that allows members of the Board to deliberate and make decisions on this case. Cole stated that this option will satisfy due process. Eric disagreed.

After discussion with legal counsel, Leland suggested the Board enter into executive session with the District's attorney to discuss legal options. Secretary, Gary Young, moved to proceed to executive session. Vice President, David Cole, seconded the motion. Motion carried 5-0.

Executive session 2:14 p.m. – 2:47 p.m.

Leland asked the applicant if they would like a continuance or if they were ready to move forward. Scott Cusick, representative for Victory Rock, stated they would like to move forward with the application today.

Leland referenced the motions made by Eric Allmon and explained that the motions were being denied.

Leland proceeded to the evidentiary phase of the hearing. He administered an oath to the District's General Manager, Consultants, Counsel, the applicant and their consultants, and those that have established party status.

Leland heard testimony from the applicant and their consultants which included the agreed upon special conditions and answered questions related to the application. CUWCD General Manager, Dirk Aaron, laid out his executive summary, support documents, and agreed upon special provisions. Mike Keester, the District consulting geoscientist presented his analysis and answered questions. Vince Clause presented a geologic assessment and laid out his findings. Legal Counsel, Cole Ruiz, answered questions and added additional thoughts necessary to add clarity to the Board's deliberation on the Victory Rock's application. Leland invited the protestants and their legal counsel to state their concerns and ask questions of the applicant, the District, and consultants.

Break 5:55 p.m. – 6:11 p.m.

After the break, Attorney Eric Allmon, had questions for the consultants as well as the applicant.

Leland offered the applicant an opportunity for rebuttal.

Leland concluded the discussion on the Victory Rock LLC amended application for an operating permit for 2 ac/ft per year from an existing well completed to the Hensell Layer of the Trinity aquifer. He asked if anyone wished to submit additional evidence.

Attorney, Cole Ruiz, commented that earlier the Board had denied the request for a continuance. After hearing application, if there is still a desire for a continuance for additional evidence to be submitted, this would be the time to request it. This would also be the opportunity for protestants to withdraw their protests.

Protestant, Marcus Edwards, requested time to communicate with his consultant. Request was granted.

(Break 6:45 p.m. – to 6:56 p.m. to allow protestant time to speak with their consultant.)

Leland addressed Marcus Edwards about a continuance. Marcus stated that he and Salado Creek Water and Air Coalition do not wish to seek a continuance.

Leland concluded the evidentiary portion of the first application and asked the Board if they had interest in further discussion. Director, Scott Brooks, had questions for the applicant and verified the agreed upon special provisions. Scott moved to go into executive session to discuss issue of geological assessment. Gary Young seconded the motion. Motion carried 5-0.

Executive session 7:02 p.m. – 7:16 p.m.

Leland asked for any further discussion on the application. Hearing none, he asked for a motion to grant, deny, or partially grant the request for an operating permit of 2 ac-ft/year with agreed upon special provisions.

Director, Scott Brooks, moved to grant the request for an operating permit of 2 ac-ft/year from the Hensell layer of the Middle Trinity aquifer with agreed upon special provisions as described. Director, Jody Williams, seconded the motion.

Motion carried 5-0.

Director, Scott Brooks, amended motion to include an expiration date for the temporary permit will expire 12/31/21 or when the new well is complete. Which ever comes first. Director, Jody Williams, seconded the amendment.

Amended motion carried 5-0.

4b) 7:22 p.m. Leland will hear testimony and deliberate on the combined drilling and operating permit application from Victory Rock for a new well to be completed in the Lower Trinity aquifer.

Leland certified for the record that the participants in the hearing for item 4a will be the same for 4b.

Marcus Edwards

Johnny/Sharon Baird (also representing Matthew/Amy Baird)

Dennis Baird

Emily/Casey DeWees

Ashley Liebig

Salado Creek Water and Air Coalition (does meet 3 conditions of being an association).

Eric Allmon (representing counsel – not seeking to personally be a party to the case).

Leland proceeded to the evidentiary portion of the hearing. He administered an oath to the District's General Manager, Consultants, Counsel, the applicant and their consultants, and those that have established party status.

Leland heard testimony from the applicant and their consultants which included the agreed upon special conditions related to the application. The applicant stated that their testimony was laid out in 4a and answers to the questions will be the same. He requested his presentation from 4a be included in evidentiary record for 4b. CUWCD General Manager, Dirk Aaron, laid out his executive summary, support documents, and agreed upon special provisions. Mike Keester, the District consulting geoscientist presented his analysis and answered questions. Legal Counsel, Cole Ruiz, answered questions and added additional thoughts necessary to add clarity to the Board's deliberation on the Victory Rock's application.

Leland addressed the protestants and asked if they would like to move forward with this contested case hearing or request a continuance. Marcus Edwards explained that the Board denied their prior request so he felt like this one would be denied as well. Cole Ruiz explained this is a new permit application. It has not been before the Board. The previous item was a continued hearing from March 2021. Marcus commented

that as long as he can ask questions along the way, he will not ask for a continuance to the contested case hearing.

Leland invited the protestants and their legal counsel to state their concerns and ask questions of the applicant, the District, and consultants.

Leland inquired if there was any additional evidence. Hearing none, he gave the protestants another opportunity to request a continuance. They did not request a continuance. Leland concluded the evidentiary portion of the hearing and asked the Board to make a motion to grant, deny, or partially grant Victory Rock's request for a drilling and operating permit of Lower layer (Hosston) of the Trinity aquifer as described in the hearing.

Additional discussion/questions were asked.

Director, Scott Brooks, moved to go to executive session for further discussion and guidance from legal counsel. Director, Jody Williams, seconded the motion. Motion carried 5-0.

Executive Session 9:22 p.m. – 9:34 p.m.

Director, Scott Brooks, asked for clarification from the applicant regarding the site plan. The plan will be done and sealed/stamped by a P.E. by the time the well is operable. Scott Cusick confirmed that to be true.

Director, Scott Brooks, moved to grant the proposed drilling and operating permit of 30 ac-ft/year from the Lower Trinity aquifer with standard conditions as required and special conditions/provisions as follows prior to operating the completed well.

The applicant will provide the District with the following:

- Their aggregate production operator registration
- Their storm water pollution prevention plan
- Their spill prevention control and counter measure plan
- Their air quality standard permit for temporary rock crusher
- Their minor NSR air permit when available
- Their sealed site plan that includes retention pond and all its components
- 24-hour pump test
- Ability for the District to work with well driller and consultant to accomplish a geophysical log at the District's expense.

Director, Jody Williams, seconded the motion.

Leland asked if there was any other discussion. Dennis Baird had a comment. He stated that Dirk had presented things differently than what he was hearing in the motion. Clarification was made by Dirk and Legal Counsel. Dennis was concerned about protecting Salado Creek. The evidentiary portion of the hearing was closed. No other testimony can be received. Based on legal counsel in executive session, the Board has a motion on the floor. Other comments were made and addressed by legal counsel, the Board, and General Manager.

Motion carried 5-0.

4c) Leland called to order the permit hearing described in agenda item 4c at 9:53 p.m. He gave a brief summary of the application

He noted for the record that the hearing had been properly noticed according to statute and District rules. Leland instructed anyone wishing to participate in the hearing, in support or protest, to sign up to speak.

As presiding officer, Leland will hear evidence and sworn testimony, and rule on any procedural issues. He stated that the permit application must meet certain elements to be approved. General Manager, Dirk Aaron, will cover these elements in his review and recommendations.

Leland noted that the applications before the Board have undergone administrative, legal, and technical review by District Staff, General Counsel, and Geoscience Consultants and he reviewed the procedures that will apply to the hearing.

Leland asked if there was anyone wishing to participate as a party to the case. There was none.

Leland administered an oath to Kelly Carter and Dirk Aaron. Leland heard testimony from the applicant, Kelly Carter. CUWCD General Manager, Dirk Aaron, laid out his executive summary and support documents. Dirk explained this was an N1 well and would not require any special provisions or conditions. It would not be metered. He recommended the Board approve the well.

Leland asked if there were any comments or questions. There were none.

Leland closed the evidentiary portion of the hearing and asked the Board to grant, deny, or partially grant the application for a combination drilling and operating permit for Kelly Carter.

Secretary, Gary Young, moved to grant the application for a proposed drilling and operating permit for Kelly Carter of .87 ac-ft/year. Vice President, David Cole, seconded the motion.

Motion carried 5-0.

Public Hearing closed and Board meeting reconvened at 10:03 p.m.

5. *Discuss, consider, and take appropriate action if necessary, to accept the monthly financial report for April 2021 (FY21) as presented.*

Board members received the monthly financial report for April 2021 in their Board Packet to review prior to the meeting.

Director, Jody Williams, moved to accept the monthly financial report for April 2021 as presented. Director, Scott Brooks, seconded the motion.

Motion carried 5-0.

6. *Discuss, consider, and take appropriate action if necessary, to accept the monthly Investment Fund Account report for April 2021 (FY21) as presented.*

Board members received the monthly investment fund account report for April 2021 in their Board Packet to review prior to the meeting.

Director, Scott Brooks, moved to accept the monthly investment fund account report for April 2021 as presented. Secretary, Gary Young, seconded the motion.

Motion carried 5-0.

7. *Discuss, consider, and take appropriate action if necessary, to accept the application for the summer internship program candidate Carson Barr.*

Board members received the internship program information and candidate resume in their Board Packets to review prior to the meeting.

Dirk introduced the internship candidate, Carson Barr, to the Board. Leland commented on his resume and the work he did with Dr. Robert Mace. Dirk explained Carson's role while as an intern for the District.

Vice President, David Cole, moved to accept the application of Carson Bar for the summer internship program. Director, Scott Brooks, seconded the motion.

Motion carried 5-0.

8. *Discuss, consider, and tack appropriate action if necessary, to approve the Required DFC Summary report for GMA8 by resolution.*

Dirk stated that the District held the required public hearing on the proposed DFCs relevant to the District and encouraged the public to make comments. The public hearing was properly noticed in both the Temple Daily Telegram and the Killeen Daily Herald. The public comment period was extended to February 3, 2021. The District did not receive any verbal or written comments before or after the public hearing. The District does not recommend any changes to the proposed DFCs and requests that GMA8 proceed with final adoption.

Dirk recommended the Board approve the summary report by resolution that state the District recommends no changes to the proposed DFC for the District as those proposed for adoption by GMA 8 on October 27, 2020.

Director, Scott Brooks, moved to approve the resolution. Director, Jody Williams, seconded motion.

Motion carried 5-0.

9. *Discuss, consider, and take appropriate action if necessary, to begin the RFQ process for selecting Professional Auditing Services.*

Staff recommends an RFQ be sent out for professional auditing services. This is done every 3 years. A letter will be sent explaining the requirements. Dirk noted that an additional component to the RFQ under references. The auditing firms will have to provide a copy of their most recent Peer Review report, the related letters of comments, and the firm's response to the letters.

Leland explained what the Peer Review report is. If a firm is not meeting all the QCC requirements they are not qualified to submit an RFQ. Dirk noted that the District's current auditing firm has lost their accreditation.

Leland will assign 2 Board members to review the RFQs and make a recommendation to the Board.

Secretary, Gary Young, moved to begin the RFQ process for selecting a professional auditing service. Vice President, David Cole, seconded the motion.

Leland appointed David Cole and Gary Young to review the RFQs with Dirk and return with a recommendation.

Motion carried 5-0.

10. *Discuss, consider, and take appropriate action if necessary, to approve the enhanced Edwards BFZ Water Quality Monitoring efforts in the Prairie Dell Area of Bell County.*

This item reflects back to today's hearing. The participants with Edwards BFZ wells testified that they wanted to participate in the water quality monitoring efforts. Dirk asked the Board to give him the "go ahead" to initiate this program.

Director, Scott Brooks, moved to direct Dirk to begin the water quality monitoring efforts in the Edwards BFZ wells in the Prairie Dell area of Bell County with an enhanced water quality monitor. Secretary, Gary Young, seconded the motion.

Motion carried 5-0.

11. *Discuss, consider, and take appropriate action if necessary, to change the date of the June board meeting to June 16, 2021 at 1:30 p.m.*

Dirk explained that there are several conflicts with the June 9th Board meeting. TAGD has scheduled their quarterly meeting and public funds training for June 8th and the quarterly meeting for June 9th. Leland and Dirk are both required to participate in the public funds training. Dirk also informed the Board the TWCA annual conference is June 9-11. He is on the TWCA Board and is required to be there. There will be a lot of relevant groundwater discussion at this meeting. There will also be a possible permit hearing in June as well.

Dirk recommended moving the June meeting to June 16th.

Director, Jody Williams, moved to reschedule the June 9th Board meeting to June 16th. Director, Scott Brooks, seconded the motion.

Motion carried 5-0.

- 12. Discuss, consider, and take appropriate action if necessary, to approve the FY21 line-item budget amendments as requested.**

Dirk presented the request for line-item budget amendments for the purpose of adjusting the pay for the summer intern, the purchase of a turbidity meter for the Edwards BFZ water quality monitoring program in the Prairie Dell area, and data base enhancements to update layers of the CUWCD data base.

Dirk reminded the Board that these are simple adjustments between line-items.

Vendor	Line Item	Invoice Amount	Available Funds	Amount Requested	New Balance	From	Available Funds	New Balance
	52020- PartTime/Intern		\$2,640.00	\$360.00	\$3,000.00	53620-Ed Outreach-Supplies/Equip	\$4,457.78	\$4,097.78
	53110.5- Edwards BFZ		\$0.00	\$2,000.00	\$2,000.00	53620-Ed Outreach-Supplies/Equip	\$4,097.78	\$2,097.78
	Water Quality Study							
Half	53305-Data base enhancem	\$250.00	\$0.00	\$250.00	\$250.00	53620-Ed Outreach-Supplies/Equip	\$2,097.78	\$1,847.78

Vice President, David Cole, moved to approve the budget amendments as requested. Director, Scott Brooks, seconded the motion.

Motion carried 5-0.

- 13. Discuss, consider, and take appropriate action if necessary, to set Board meeting calendar dates for June, July, and August 2021, related to FY22 budget development process.**

Dirk laid out the timeline for FY22 budget development process and touched on some items of interest for the upcoming fiscal year.

Vice President, David Cole, moved to set the Board meeting calendar dates for June, July, and August as suggested related to the FY22 budget development process. Secretary, Gary Young, seconded the motion.

Motion carried 5-0.

- 14. General Manager's Report concerning office management and staffing related to District Management Plan³.**

- Education events are ramping back up.
- Dirk spoke at Lions club and Rotary club this month.
- Dirk was invited to speak an event hosted by Texas Farm & Ranch Education Services at Tenroc Ranch. Dirk described the event and topics of the day.

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

- a) *Drought Status Reports*
- b) *Education Outreach Update*
- c) *Monitoring Wells*
- d) *Rainfall Reports*
- e) *Well Registration Update*
- f) *Aquifer Status Report & Non-exempt Monthly Well Production Reports*

Dirk discussed the drought status report.

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

- 16. Director comments and reports³.**

None

- 17. Discuss agenda items for next meeting.**

- Permit hearings – Jack Hilliard/Trinity Oasis

18. *Set time and place of next meeting.*
Wednesday, June 16, 2021 at 1:30 p.m.

19. *Adjourn.*

Board meeting adjourned with President, Leland Gersbach, at 10:47 p.m.

Workshop:

Item #1. Receive information related to Groundwater Management Area 8, per the Joint Planning and Development of the Round 3 DFC.

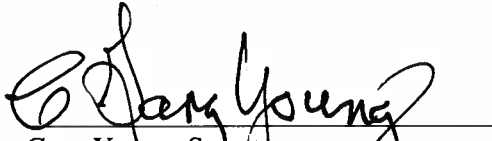
Item #2. Receive Legislative Update on the 87th Legislative Session.

Item #3. Discuss and review the NRCS TX Conservation Grant for FY21.

Due to the length of the Public Hearing/Contested Case Hearing, no workshop items were discussed.


Leland Gersbach, President

ATTEST:


Gary Young, Secretary or
Dirk Aaron, Assistant Secretary