

GMA 9 Edwards Group DFC Public Hearing Background Information

February 17, 2010

Introduction

GMA 9 is considering proposed revisions to the August 29, 2008 Desired Future Condition (DFC) set by GMA 9 for the Edwards Group of the Edwards-Trinity Aquifer. GMA 9 is holding a Public Hearing on Monday, February 22, 2010 in Kerrville to listen to stakeholder input on the proposed revisions. (See attached Agenda or view at: www.blancocountygroundwater.org)

Why is this being done?

At a Special Meeting on January 21, 2010, the DFC set by GMA 9 for the Edwards Group of the Edwards-Trinity Aquifer was declared "not reasonable" by the Texas Water Development Board (TWDB). This action was a result of petitions filed by Region J, the Kerr County Commissioners' Court, and the Upper Guadalupe River Authority appealing the DFC.

Before and After...

For the 50 year, 2010 - 2060 Planning Period, the original Edwards Group DFC set by GMA 9 was intended to:

- **allow no net increase in average drawdown from current conditions (GMA 9 DFC)**
- **allow exempt well pumping to continue at current annual rate**
(Kerr County annual demand is about 870 ac. ft.)
- **provide for reasonable future well drilling needs for exempt wells**
(393 ac. ft. additional for Kerr County = a total MAG of 1263 ac. ft.)
- **have minimal impact on Edwards Group spring flow (4% reduction)**
- **minimize impact on base flow to the Guadalupe River and local creeks (none)**

Under the recommended DFC proposed by the TWDB, Kerr County residents and all downstream Guadalupe River Basin stakeholders are projected to experience:

- **9 feet of increased drawdown in the Edwards Group in Kerr County (TWDB DFC)**
- **MAG increases from 1,263 ac. ft. to 4,000 ac. ft. per year (all of which is allocated to future growth in exempt well demand)**
- **12% reduction in Edwards Group spring flow into the head waters of the Guadalupe River**
- **2000 acre feet of flow loss to the Guadalupe River and local creeks (in addition to the 12% reduction in spring flow)**
- **Edwards Group to be declared "Not Relevant" for Bandera and Kendall Counties (approx. 200 ac. ft. each)**

GMA 9 must, at either this meeting or one in the future, set a DFC for the Edwards Group that:

1. **accepts the TWDB's recommendations, or**
2. **revises the TWDB's recommendations, or**
3. **re-adopts the original DFC, or**
4. **establishes a completely new DFC.**

Background Information

September 20, 2005 - GMA 9 begins series of regional planning meetings.

On this day, the first GMA 9 Meeting was held in response to new Legislation passed under HB 1763. Following this initial meeting, GMA 9 met numerous times each year, and in addition, set up a Technical Group that also met several times. All of these meetings were open to the public and the public was offered an opportunity to provide input at many of these meetings. GMA 9 cooperated with a University of Texas graduate student class that spent nearly a year conducting stakeholder interviews and preparing a report on "What Do Groundwater Users Want". Six Public Meetings were held to take stakeholder input on the DFC process and a Public Hearing was held prior to setting the DFC for the Edwards Group of the Edwards-Trinity Aquifer, the Ellenberger Aquifer, the Hickory Aquifer, and the Marble Falls Aquifer.

"Protect Spring Flow and Base Flow to Creeks and Rivers"

The most prevalent stakeholder comment received by GMA 9 over a three year period was the desire and need to manage the aquifers in such a way as to "protect spring flow and base flow to creeks and rivers." This sentiment was supported by a diverse group of stakeholders including: landowners, state and local government representatives, environmental organizations, recreational interests, local businesses, and wildlife organizations. The second concern most often heard was, in summary, "do not rush into setting a DFC, give due consideration to all aspects of the aquifer system, and do what is best to provide for sustainable water for those who rely on groundwater from GMA 9."

August 29, 2008 - GMA 9 sets first DFCs

GMA 9 took these stakeholder comments very seriously. GMA 9 spent three years working cooperatively together and gave due consideration of geological conditions, hydrological characteristics, socio-economic issues, environmental needs, demographic trends, Regions J, K, and L Water Plans, and other related issues. As a result of this lengthy effort, GMA 9 finally established and approved a DFC for the Edwards Group of the Edwards-Trinity Aquifer. The primary intention of the DFC was to provide maximum protection for springs and base flow to creeks and rivers. The DFC as approved by GMA 9 was stated as follows:

"Allow for no net increase in average drawdown (from current conditions) in the Edwards Group of the Edwards-Trinity (Plateau) Aquifer."

This DFC was approved by the GMA 9 Committee with 8 Members voting "Yes" and 1 Member voting "No". The dissenting vote was from the Headwaters Groundwater Conservation District (Kerr County) representative who voted in accordance with instructions from her Board of Directors. (It should also be noted that she was instructed to vote "No" on three other DFCs even though the DFCs for those aquifers were intended to apply only to Blanco County.)

GMA 9 reasoned that this DFC would provide the best chance at maintaining spring flow and base flow to creeks and rivers as close to current average levels as possible. Many local Groundwater Conservation Districts (GCDs), including Headwaters GCD, had already prohibited the completion of new non-exempt wells (irrigation, commercial, etc.) in the Edwards Group and the DFC set by GMA 9 would help support those prohibitions. Exempt well use (household domestic and livestock watering uses) was considered minimal and the expansion of this demand was expected to be slow and spread over the 50 year planning period. This would allow time for GCDs to develop and implement various management strategies and incentives

such as water conservation, water reuse, and rainwater harvesting that would further reduce the demand on the Edwards Group and help achieve the DFC. Any additional demand could be provided by the underlying Trinity Aquifer.

TWDB calculations show that current Edwards Group estimated annual demand is about 870 acre feet and the DFC would result in about 1263 acre feet of Managed Available Groundwater (MAG). This means about 393 acre feet would be available to accommodate future exempt well completions yet still maintain current average aquifer drawdown with a reduction in spring flow of only 4%.

In approving this DFC, the GMA 9 Committee believed it had:

- set the DFC in accordance with requirements of Texas Water Code Chapter 36;
- addressed the concerns expressed by a significant number of stakeholders in a variety of public forums to "protect spring flow and base flow to creeks and rivers";
- provided a DFC that would provide maximum, reasonable, and achievable protection for springs and base flow to creeks and rivers;
- resulted in a Draft MAG quantity that allowed for some future additional demand on the Edwards Group;
- set a DFC with a resultant Draft MAG that local GCDs could implement, measure, and achieve using a variety of water management strategies currently available to GCDs.

August 25-28, 2009 - Petitions received and DFC appeal process begins.

In late August, 2009, Groundwater Districts in GMA 9 and the TWDB received petitions from Region J, the Kerr County Commissioners' Court, and the Upper Guadalupe River Authority (UGRA). These petitions appealed the DFC for the Edwards Group and provided evidence to show why they believed it was "not reasonable".

TWDB Rules allow petitioners one year from the date the DFC was set to submit a petition appealing the DFC. However, petitioners must submit the petitions to the GCDs 30 days prior to submitting them to the TWDB. Thus, the petitioners failed to meet the statutory requirements. However, the TWDB approved a request for a rule waiver from the petitioner and the petitions were allowed to proceed.

The DFC and the resultant Draft MAG were now placed on hold until the petition process could proceed according to TWDB Rules.

November 2, 2009 - TWDB Hearing in Kerrville

On this day, the TWDB held a Hearing in Kerrville, Texas on the petitions in order to hear testimony and evidence from the petitioners and GMA 9 on the reasonableness of the DFC set for the Edwards Group.

TWDB staff members processed the testimony and evidence and prepared a Staff Report for the Texas Water Development Board Members to consider at their January 21, 2010 meeting in Austin.

Summary of the TWDB Staff Report

The petitioners made various allegations and offered evidence that GMA 9 had failed to follow proper administrative procedure, had ignored stakeholder comments, had used inadequate data, had not used the proper Groundwater Availability Model, had failed to consider Regional Water Plans, and had not considered exempt well usage.

The GMA 9 response provided evidence that they had indeed addressed all these issues in an appropriate manner and that the petitioners' allegations were baseless.

The TWDB staff analysis of the testimony and evidence found that none of the assertions by the petitioners provided any evidence that the DFC was not reasonable. Thus, all the allegations made by the petitioners were denied. It would seem that GMA 9 had conducted its business and set the DFC in an appropriate and reasonable manner and was vindicated by the TWDB Staff Report. To the utter surprise of GMA 9 and groundwater professionals all across the state, such was not the case.

TWDB Members Ruling finds the DFC is "Not Reasonable"

After denying all the allegations of the petitioners, the TWDB staff took the process in an unexpected and unprecedented direction. TWDB staff initiated and conducted a technical analysis on the interaction of the DFC, the resulting MAG quantity, and the current and projected exempt well demands.

In short, TWDB staff calculated, using two different scenarios, that the DFC and its accompanying MAG would not meet Regional and State projections for growth in exempt well demands in Kerr County. They concluded that, since the DFC would result in a MAG that would not meet projected demands in 2060, it was "not reasonable". The TWDB Staff Report concludes by recommending that the Board Members declare the GMA 9 DFC for the Edwards Group in Kerr County to be "not reasonable" and recommend that the DFC be revised to read:

"...an average drawdown of 9 feet in Kerr County and a declaration that the Edwards Group is not relevant in Bandera and Kendall Counties."

January 21, 2010 - TWDB Special Meeting on GMA 9 DFC Appeal

Staff Report

At this meeting, TWDB staff made an initial presentation and summarized the Staff Report and the staff recommended revisions to the GMA 9 DFC.

Petitioner Comments

Jonathan Letz, Kerr County Commissioner and Chairman of Region J addressed the Board and stated that they supported the TWDB Staff Report and recommendations.

The attorney for the UGRA addressed the Board and stated that the UGRA also supported the TWDB Staff Report and recommendations.

Charles Kreidler, P.G., made brief comments to the Board on behalf of the petitioners.

Respondent Comments

Ronald G. Fieseler, General Manager for the Blanco Pedernales Groundwater Conservation District and GMA 9 Coordinator, addressed the Board. Since GMA 9 had not been able to meet prior to this meeting, Fieseler noted that he was responsible for this statement and although he had compiled this statement based on comments he had received by email, telephone, and personal communications, he was not representing GMA 9 in any official capacity.

Mr. Fieseler's statement to the Board included some of the following concepts:

- In the Staff Report, while all of the petitioners' allegations were denied, the TWDB pursued a new line of analysis, in which all of the findings and recommendations were based on current and projected exempt well demands, something they had previously avoided.

- GMA 9 members and several stakeholders had repeatedly asked TWDB to produce MAG numbers that would separate out exempt and non-exempt quantities. The TWDB refused to do so and stated that such action was the responsibility of the GMA and its GCDs and that the MAG was not intended to be broken out like that.
- Nowhere in Chapter 36 does it state that GMAs must set a DFC that will achieve TWDB or any Regional Water Planning Group demand projections. The GMA would determine what would be locally acceptable reductions (or perhaps even increases) in aquifer levels, water quality, depletion, lowered spring flow, etc.
- The Staff Report failed to adequately discuss statutory GCD regulatory authority, policies, or programs that would allow GCDs the opportunity to work toward achieving the DFC and MAG.
- GCDs were told that they would have to monitor aquifer conditions in order to demonstrate that they were working toward achievement of DFCs and MAGs. Combined with the requirement for the GMA to meet once per year and conduct a review at least every five years for possible revision of the DFC indicates that the DFC process is an iterative process that is far from perfect.
- In his conclusion, Mr. Fieseler stated, "It would seem to me that the most reasonable procedure would be for the TWDB Board to allow GMA 9 the opportunity to evaluate and set their DFCs and then try to achieve them through appropriate management strategies. Why not allow GMA 9 and its locally elected Groundwater Conservation District Directors the opportunity to answer the concerns of their constituency? If a given DFC is clearly not working after 5 or 10 years, then I will be among the first to urge a revision."

However, the Board Members did not agree and voted unanimously to accept the Staff Report findings and recommendations.

February 22, 2010 - GMA 9 Meeting an Public Hearing

As a result, GMA 9 is now required to propose the revisions recommended by the TWDB and hold a Public Hearing to solicit comments from stakeholders. The GMA 9 Meeting and Public Hearing being held on February 22, 2010 is in response to that requirement.

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