

Approved February 4, 2002

**Galveston Bay Freshwater Inflows Group
29 August 2001 Meeting Summary**

Participants Present: Jim Adams, John Bartos, Richard Browning, Jeff DallaRosa, Cindy Loeffler, Bob McFarlane, Bruce Moulton, Linda Shead, Chuck Settle, Mary Ellen Whitworth, Pudge Willcox, Woody Woodrow

Support Team Present: Heather Biggs, Glenda Callaway, Greg Graml, Lisa Gonzalez, Jeff Taylor, Pris Weeks

Others Present: Fred Werner (USFWS)

1. The Galveston Bay Freshwater Inflows Group (GBFIG) met at the City of Houston's E.B. Cape Center for Public Works Excellence, 4501 Leeland, Room 131 Houston, Texas 77023. Self-introductions were made.
2. The 26 February 2001 meeting summary was approved without additional changes. Approval of the 18 July 2001 summary was deferred until the next meeting. Members were asked to look over their July meeting notes and send any additions to the summary to the GBFIG Team. A request was made for the handout on Environmental Flow Criteria (provided by Gary Powell at the 18 July 2001 meeting) to be provided to GBFIG members electronically.
3. The agenda was approved. The goal of this meeting and the last is to discuss management scenarios so that they can be ranked according to which are most doable and effective at achieving the end goal. Scenarios will be discussed and ranked for future discussions. None will be completely eliminated at this time.

EIH would like to post some of the GBFIG items on the EIH website. This will not include meeting agendas and summaries or stakeholder names, but will include items such as the GBFIG recommendations to Region H and links to related internet resources. There was no opposition from the members present.

4. An update was given on the TWDB freshwater inflows stakeholder group and its smaller, advisory roundtable group. The larger group was convened to develop recommendations on surface water plan issues for presentation to the TWDB for future submission to the legislature. The smaller roundtable group consisted of approximately 20 members from diverse backgrounds (i.e. Sierra Club, TPWD, SJRA etc.). Their goal was to achieve consensus on different issues. Consensus was reached on some issues, but there was limited time. The larger stakeholder group created a list of approximately 50 recommendations. Each

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stakeholder had to go on the record as supporting or opposing each of the recommendations.

Some recommendations that made it through the roundtable group were not included in the recommendations made by the larger stakeholder group. An example of a recommendation that made it through the roundtable group, but not through the larger stakeholder group was the concept of dedicating water rights for environmental use.

Adams explained by saying that some stakeholders were concerned that activating senior water rights not used in the past would negatively affect active junior water rights.

Shed suggested that wording be crafted that would not scare people away from supporting the idea. **Loeffler** stated that the TPWD assumed the idea of a water trust was well supported. If it is not, what is the alternative?

Adams stated that many streams exhibit greater than natural flows under normal conditions due to wastewater effluent. There is greater flow than in the past. The problem lies in re-distribution of flows. **Loeffler** stated that while she agreed low flows are higher than historic flows, she was not sure the same was true for all flows. She concurred that redistribution of flows is something that should be addressed.

The roundtable advisory board has finished and will not meet again. The TWDB will make the ultimate decision regarding advisory board recommendations to the State Water Plan. The advisory roundtable does deserve some credit for bringing stakeholders together.

Callaway asked for an update on the San Marcos River water rights issue. **Loeffler** stated that the San Marcos River Foundation applied for a water right for the amount of 1.3-million acre-feet on the Guadalupe and San Antonio Rivers. TNRCC declared the application administratively complete in September 2000. The application was sent out to water right holders for public comment. The deadline for written comments was last week. The TNRCC will create the draft permit and the Commission will ultimately approve or deny. Public comment has varied: there were

requests that the permit be denied, there were a few requests for contested hearings and there were some letters of support as well.

Loeffler stated that TPWD offered some technical support. The amount of 1.3-million acre-feet was based on a TPWD freshwater inflow study. The San Marcos River Foundation raised the money needed for the \$20,000 filing fee. If the right is granted it will be placed in the Texas Water Trust for which the TPWD is the trustee. In that event, all future costs borne by the San Marcos River Foundation will disappear.

Some concerns have been raised stating that this junior water right would negatively impact senior rights. **Loeffler** stated that this is not true. Under current law, future diversionary rights (for transfers) are junior to everything in the basin.

Adams stated that the environmental transfer would impact many others and would impact regional growth possibly preventing future permits in the basin. **Loeffler** disagreed by saying that, geographically, this water right is the last going down-river to the estuary. There are no senior rights downstream of the proposed water right. The next big step is to identify how to manage water use in the basin to support human needs and still provide a level of inflow to meet estuary needs.

Browning asked if this permit would lock up the remaining water in the system. **Loeffler** stated that the TNRCC would determine that by running the WAMs. **Woodrow** suggested that if this water (the 1.3-million acre-feet) is available in the system then some other entity could apply for it as well.

Browning stated that the 1.3-million acre-feet would not be available 100% of the time. **Taylor** stated that the TNRCC will identify the diversion rate and will modify the applied-for amount. Two factors will restrict the maximum amount of water that will be permitted. The permit will only be approved if the water is available today. Approval is not based on future flows.

Loeffler predicted that more water marketing (buying and selling of water rights) will occur.

Browning stated that in an ordinary application, these things must be spelled out before an application is declared administratively complete. What is in an application?

Loeffler stated that it is one thing to request an amount of water and another thing to determine the amount actually available. Determination of water availability was difficult prior to the WAMs. It is now easier to determine, but still requires some interpretation due to the eight different scenarios.

Browning stated that some water rights applications for the Trinity basin have been with the TNRCC for two years and are still not administratively complete. All applications, whether for the environment or for development should be treated equally.

Weeks brought a copy of a letter regarding freshwater inflows submitted by the Gulf of Mexico Fisheries Management Council (GMFMC). Copies will be made available. Loeffler made a presentation on freshwater inflows to the GMFMC in July 2001.

Adams provided an update on Region H planning issues. They have been please with the performance of the consulting team and plan to rehire them. Through June 2002, will undertake a study to determine how to pay for needed infrastructure. The consultants will determine infrastructure needs and what will be paid for by the State.

Mcfarlane asked if they will look into the cost of building future reservoirs. **Adams** replied that in the past it cost approximately \$30 million to build Lake Conroe and now costs \$300-400 million to build a new reservoir plus \$100 million to build the needed infrastructure. It takes time to develop customers and makes it difficult to cover the financing until the project can begin to pay for itself. It is getting close to being a limiting factor for future population growth.

There was nothing new to report on Region C, but **Browning** commented on possible transfers between Texas and Oklahoma. He stated that much needs to be resolved in Oklahoma before they can work with entities in

Texas. There are state and tribal issues. Some groups do not want to see water leave Southeast Oklahoma. The water is there, but it is very political.

5. **Moulton** updated the group on recent legislation. Recently, the TNRCC, TPWD and TWDB underwent the Sunset agency review process. The TNRCC has been approved for another 12 years. Legislative changes have focused more on air than water. The TNRCC will undergo a name change on January 1, 2004 and will be called the Texas Commission on Environmental Quality. Highlights from the TNRCC sunset review included:

- ✓ Advisory groups should have balanced representation and include those entities most affected.
- ✓ TNRCC should develop policies dealing with cumulative risks.
- ✓ TNRCC was accused of being an advocate in some circumstances. The Executive Director's role at hearings will now be for informational purposes only.
- ✓ There is a policy shift: the TNRCC will consider, rather than encourage economic development.
- ✓ The storage tank program will continue with funding until 2006.
- ✓ There will be a 4% TNRCC salary increase. The FTEs for the TMDL program will increase, but the FTE cap for the agency is still in place.
- ✓ There were very few changes between the SB2 mandates and those of SB1 in 1997. [A summary of SB2 is available from EIH]
 - ✓ Texas Water Policy Council created. Will consist of agencies and the public to advise on state water initiatives.
 - ✓ TWDB required to complete groundwater WAMs for the major aquifers by 2004.

Minor bills include floodplain management and HB 247 (Turner) relating to the use of stored water for environmental use on private property (200 acre-feet or less on private property- exempt). The intent of the legislation must be defined- how will "commercial" be defined? Hunting leases were originally exempted, but a line was drawn for commercial gain.

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TNRCC Commissioner, John Baker, was not re-appointed. Governor Perry will make a new appointment.

Other updates included:

Loeffler - a Natural Resources Interim Joint Committee consisting of House and Senate members will take up the issue of instream uses- is it a statutory beneficial use? Funding, interbasin transfers, water marketing and water financing will be studied. The Committee Chair is not known.

Taylor - Trinity Basin WAMs will roll out December 31, 2001 per a contractual deadline. A draft is not yet available, but should be by October or November, 2001.

Moulton - TNRCC water program is reorganizing for the better. The five divisions will combine into 2 divisions. The positions for division directors have been advertised.

Break

6. Discussion of specific management scenarios:

Costs and Benefits of Voluntary Dedication of Water Rights:

Refer to the sample scenario drafted by Cindy Loeffler and Chad Norris of TPWD.

This scenario would yield 3,413 acre-feet per year in the San Jacinto basin assuming that all rights not used within the last ten years would be dedicated (does not include statutory rights). This does not include the Trinity basin since the WAM is not yet available.

Do not assume that this is the least amount. If portions of water rights are not used, then some WAMs look at those portions as being cancelled. Given that, the number would be bigger, but that is optimistic.

There are no incentives in place. Tax incentives are a possibility, similar to tax benefits associated with other types of property donations. Theoretically, there

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would be no out of pocket expenses to the donor. Cancellation of rights is not a large threat.

There are many non-public water rights holders. For example, a Luce Bayou organization has water rights to sell. Their price is high and they will most likely not donate the rights.

There are negatives associated with this scenario. If a donated water right does not lose its priority, under certain circumstances it may negatively impact upstream and downstream junior rights. An example: assuming instream flows are wanted all of the time, flows are not available- more junior rights would be called upon through the TNRCC Water Master. However, any senior water rights that have not been in use, when activated, will impact upstream and downstream junior rights as well. It is a fundamental issue associated with the prior appropriation system. Is an example where a cancellation of right and the water trust could be applicable.

Some people do not want to sell water for use as environmental flows. Example: a senior right initially used for irrigation, but sold for a different use could have adverse effects on other water rights holders. These adverse effects could be minimized by the timing of the new use's activation of the right. For instance, the right may not be allowed to be activated during drought conditions, but could be activated during periods of "artificial" drought. Can this type of clause be written into a permit?

A permit for a voluntary dedication of a water right might be worded in such a way that it becomes a junior right once the transfer is made. This may lessen the impact on other rights holders. TPWD has been working on this issue for more than a decade. The down side: it places the burden on new junior rights holders and may not work during natural drought conditions. If a new, voluntary environmental automatically becomes a junior right, it will not benefit the environment during drought conditions.

There are concerns about extended duration and increasing frequency of artificial (human induced) droughts. Has an artificial drought been defined or has an artificial drought been documented as occurring? Increasing population in the coming years is a factor to consider.

Natural drought conditions in the estuary should not be avoided. The stress is needed to enable organisms to maintain their tolerance to such conditions. An increase in the duration and frequency of anthropogenically created droughts should be avoided.

Recommendations to Region H included the recommendation to reuse 90 mgd ~~out of the return of approximately 400 mgd~~. This could yield future return flows of ~~600-800 mgd~~. These flow amounts will not create a drought. A multiple of the normalized flow is now flowing into the bay. Flow into the San Jacinto basin and Upper Galveston Bay should not be a concern. Flows into the Trinity basin may be a cause for concern. As development in the Houston region moves westward, water taken from the Trinity basin will increasingly be returned to the San Jacinto basin. Future water rights permits may include caveats to transfer water back to the Trinity basin.

Costs and Benefits of Spatial Redistribution of Flows:

Refer to the sample scenario drafted by Woody Woodrow and Chad Norris of TPWD.

This scenario does not provide for more water, but moves it around. For example: the City of Houston takes approximately 500 mgd at present and is expected to take 1.1 bgd in 30 years. 60% of those amounts are earmarked for return flow to the San Jacinto basin.

Currently, groundwater supplies for Harris County are 325 mgd. Groundwater supplies will lessen to about 200 mgd in 30 years. Consequently, return flows of groundwater (60% of supplies) will lessen as well.

Other ideas to bring return flows back to the Trinity basin without a pipeline are needed. Dallas will bring in water not permitted by anyone. Dedicating this future water could be a solution for getting water into Trinity Bay. There isn't a problem in Galveston Bay today, but there will be in the future.

More water will come down the Trinity when the pipelines are built to transfer water from other basins. However, this amount could be lessened if reuse increases. There will be competition for any new water coming down the Trinity River. Extra water that would come down the Trinity River could lessen the need for a proposed reservoir (possibly Bedias).

Redistribution of flows could affect downstream water rights. If return flows are moved from the San Jacinto to Trinity River basins, it could impact water rights holders in the San Jacinto basin.

- ✓ More information is needed on the amount of water that Region C is looking at for importation. Trinity basin WAMs would be helpful, but must be approved by the TNRCC before they can be released.

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- ✓ Information on the amount of water used for summer irrigation in the Houston region would be helpful
- ✓ Numbers on return flows in the San Jacinto and Trinity River basins would be helpful (Jeff Taylor can provide)

The reservoir modification scenario drafted by Reid Eichelberger with SJRA will be discussed at the October 2001 meeting.