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TO: Board Members

THROUGH: J. Kevin Ward, Executive Administrator

FROM: Robert E. Mace, Deputy Executive Administrator, Water Science & Conservation
Kenneth L. Petersen, General Counsel

DATE: January 13, 2010

SUBJECT: Procedures for Board Deliberations on Appeals of Desired Future Conditions

ACTION REQUESTED

Briefing and discussion regarding procedures for hearing reports on the appeals of desired future conditions under Tex. Water Code § 36.108(m).

BACKGROUND

In January and February, the Board is scheduled for briefing, discussion, and possible action on two petitions concerning the reasonableness of the desired future conditions (DFCs) adopted by groundwater conservation districts in Groundwater Management Areas 9 and 1. These items are to comply with Tex. Water Code § 36.108(m), and Board rules, 31 Tex. Admin. Code §§ 356.45 and 356.46, which state that “the executive administrator shall prepare a list of findings based on evidence received at the hearing and may also provide a summary, analysis, and recommendations relating to revisions to districts’ plans and desired future conditions to the Board.”

The statute and rules further state that, “if the Board finds that the petitioner has shown that the desired future condition is not reasonable, then the Board shall prepare a report that includes a list of findings and recommended revisions to the [districts].” Neither the statute nor the rules outline a procedure for how the Board is to receive and deliberate on the report from the executive administrator. This memorandum sets out a suggested procedure for this part of the DFC appeal process.

Our Mission

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The procedure is based on the way in which the Board routinely receives briefing and action items. But it recognizes that the petitioners and respondents in the appeals along with other interested persons will want an opportunity to address the Board directly. It also recognizes that the Board will want an opportunity to question the participants in the appeal and board staff.

Therefore, staff proposes the following structure for deliberating on these Board items.

Staff Presentation 15 minutes

Petitioners' Statements 15 minutes

Respondents' Statements 15 minutes

Questions from the Board

(Board members may ask a speaker questions at any time during the speaker's presentation and may extend the speaker's time as needed to address any questions.)

Public Comment 3 minutes per speaker

The Board will then have time to deliberate and make a finding that the DFC is either reasonable or unreasonable, or table a decision with a request to staff or parties to provide additional information. If the Board finds that the DFC is not reasonable, then, pursuant to board rules, it will recommend revisions of the DFC to the districts.