

Middle Pecos Groundwater Conservation District

Minutes of April 21, 2009

On this the 21st day of April, 2009, a Regular Session of the Middle Pecos Groundwater Conservation District, of Pecos County, Texas, met in the Courtroom of the Pecos County Courthouse, Fort Stockton, Texas located at 103 West Callaghan with the following members present, to-wit:

Glenn Honaker	President, Precinct 1
John Dorris	Vice President, Precinct 3
S. Evans Turpin	Acting Secretary/Treasurer, City of Iraan
M. R. Gonzalez	Precinct 2
Lynn Holland	Precinct 3
Jack McIntyre	Precinct 1
Houston McKenzie	At Large
Bart Reid	Precinct 4

Board members not present: Alvaro Mandujano, Merrell Daggett and Brad Newton.

Others Present: Paul Weatherby/General Manager, Melissa Mills/Office Manager, Bob Varmette/Fort Stockton Pioneer, Ernest Woodward, Nan Owens, Janey Lindsey, Madge Weatherby, Gary Drgac, Jeff Williams, Larry Drgac, Mike Thornhill, Rafael Castillo, Jr., Jim Duke, Ronnie & Tinita Cooper, Nancy Tarter, Lisa & Brent Siegmund, Shirley Smetak, Powell Tarter, Gregg McKenzie, Weldon Blackwelder, Refugio Rangel, Judy Turner, Alyson McDonald, Ruben Falcon, Ken Ripley and Delmon Hodges.

Call to Order. The meeting was called to order at 1:03 pm by President Glenn Honaker. Announced that a quorum is present.

Special Session. At 1:04 pm President Glenn Honaker announced that the board would enter into Executive Session to confer with Legal Counsel under Section 551.071 of the Texas Open Meetings Act.

Upon returning from the special session at 1:55 p.m., Mr. Honaker noted that no action was taken in Special Session and go to Agenda Item #1 on the Regular Agenda.

I Consider and/or act upon minutes of January 20, 2009. Lynn Holland moved, John Dorris seconded that the minutes of January 20, 2009, be approved, and the motion passed unanimously.

II Comments from Public and Media (limit 5 minutes per person).

Gregg McKenzie addressed the Board with concerns regarding House Bill 4805. He is opposed to the power it will grant to a proposed water supply district in Midland, Texas which will allow them to transport water out of Pecos County. He recollected the numerous springs that were once in Pecos County that have vanished. The only spring

we have currently is the Comanche Springs which only flows when the water being used for irrigation in the Belding area stops. He stated that the static water level is the key, and if water is allowed to be pumped in such large amounts from our area that it will not only affect our area, but also Brewster County which is our recharge area. The greedy nature of the bill is obvious when you read it. He urged the MPGCD board and all entities of west Texas to stand together and oppose the bill.

Glenn Honaker announced that there are no current applications before the Board to transport water outside the District.

Ernest Woodward addressed the Board with concerns about House Bill 4805 possibly taking the powers of the MPGCD Board away. The reason Pecos County voted for the MPGCD to be created was to protect Pecos County water.

Glenn Honaker told Mr. Woodward that his issue will be discussed by the board in a few minutes.

Ronnie Cooper addressed the Board expressing support for the Boards efforts.

President Honaker stated that the agenda order will change, and agenda item #VII will be next.

VII Consider and/or act upon Resolutions reference Legislative Bills

House Bill 4805 has been filed which may affect our authority. Many in Pecos County are concerned about transporting significant amounts of groundwater outside the district. There is a set of statutory criteria and guidelines to follow when considering the transport of groundwater outside the district. House Bill 4805 seems to take away some of MPGCD authority.

President Honaker read the following sections aloud:

- Sec. 1003.004 District Territory.
Sub section c
- Sec. 11003.101 General Powers and Duties
Subsections b and d
- Sec. 11003.103 Contracts to Supply Water
Subsections d and e
- Sec. 11003.104 Sources for Water, Acquisition of Land, Storage Capacity

Note: The above sections are in appendix A for your reference

President Honaker explained that the original District is a 20 acre tract of land South of Highway 191 in Midland County. He feels that Sec. 11003.104 usurps the power of the MPGCD.

Glenn Honaker and Paul Weatherby directed attorney Mike Gershon to draft a Resolution reflecting their concerns which are the excerpts from HB 4805 that were read aloud. A Resolution Opposing Certain Legislation Filed In The 81st Legislative Session was presented to the Board for discussion and a vote. The drafted Resolution was read aloud. The resolution was so ordered upon a motion by John Dorris and seconded by Lynn Holland.

The board was asked if there were any additions they would suggest. Bart Reid motioned to amend the wording of the Resolution to reflect the fact that this MPGCD Board has in the past given 2 transport permits, one to Upton County Water District and one to Waha Storage and Transportation. The motion was seconded by Houston McKenzie.

John Dorris and Lynn Holland consented to allow their original motion to include the amendments as stated by Bart Reid.

The motion to amend the wording of the Resolution that was made by Bart Reid and seconded by Houston McKenzie passed unanimously. 8 in Favor, No abstentions, 3 absences.

The motion made by John Dorris and seconded by Lynn Holland to approve the Resolution Opposing Certain Legislation Filed In The 81st Legislative Session including the amendment to add wording reflecting that MPGCD has granted 2 transport permits in the past received a vote of 8 in Favor, No abstentions, 3 absences. Motion passed unanimously. Note: A copy of the amended Resolution is Attachment B.

VIII Consider and/or act upon Resolutions addressing Export of Pecos County Groundwater to Any Fresh Water Supply District Outside of County

Mr. Weatherby reported that Mr. Latham has informed him that Mr. Williams intends to move forward with the project to pipe water to Midland. Mr. Weatherby would like to hire Mr. Randy Williams to review the water study reports compiled by the Thornhill Group that were presented to this Board in July 2008. Mr. Weatherby reported to the Board that Randy Williams no longer works for Turner-Collie-Braden, and has started a company on his own. Randy Williams will also be working in conjunction with Mike Gershon on the MPGCD District Rules, Management Plan and hydrological reports guidelines.

Mr. Mike Gershon will be working on our rules regarding our notice requirements and the rules governing protests to applications. Our Management Plan is required to be updated every 5 years – and it is time. Also, there has been recent legislation that requires our rules to reflect the new rulings. We are looking at rules to permit water to existing non-exempt wells that did not fall into the Historic and Existing Use permit application guidelines. This is necessary to more accurately set the Desired Future Conditions and Groundwater availability for future projections and to offer protection for those wells from large volume permit applications. These wells currently have no protection in our rules. There is a bill before the legislature to protect exempt wells. The consensus was for Manager Paul Weatherby to have the authority to move forward with these items, Board action is not required.

III. Consider and/or act upon the Account Payable, Treasurer's Report and Line Item Transfers.

Paul Weatherby told the Board about the Secretary's computer crashing on April 16th. The only financial that was presented to the Board is for 2-28-2009. There is also a line item transfer for 2-28-2009. A list of the checks written during March 2009 was presented for review. There are invoices that are from the Holladay Well Project. TXDOT has sent their final payment of over \$250,000 which covers the remaining outstanding invoices for the Holladay Well Project except for \$882.47. Also, there are over \$9,500 worth of invoices related to the Sandridge project. These expenses are covered by the tax abatement check for \$25,000 we received from Sandridge.

Lynn Holland made a motion to approve the accounts payable, Treasurer's Report and the Line Item Transfers. Seconded by Bart Reid. Motion passed unanimously.

IV. Consider and/or act upon Changes of Per Diem rate to \$36 per Day.

John Dorris made a motion to approve changing the per diem rate to \$36 per day. Seconded by M. R. Gonzalez. Motion passed unanimously.

V. Consider and/or act upon Variance reference Southern Union Grey Ranch Plant.

A variance request for the Southern Union Grey Ranch has been submitted. There was an explosion recently at the Grey Ranch Plant, and the plant had to be reworked. This caused the well placement to be 60' from the property line. Jimmy Stevens, the Chief Operator, requested that a variance be approved due to limited space within the plant yard. The neighboring land owner is Gerald Porter. Mr. Porter gave a verbal OK to the placement of the well.

Lynn Holland made a motion to approve the variance requested by Southern Union Grey Ranch. Motion seconded by Houston McKenzie. Motion passed unanimously.

VI. Consider and/or act upon Resignation of Brad Newton

On 3-09-2009 the MPGCD office received a letter of resignation from Brad Newton. Reason: Job relocation out of Pecos County. Bart Reid made a motion to accept the resignation of Brad Newton, seconded by Evans Turpin. Motion carried unanimously.

Move to agenda item #IX

IX Consider and/or act upon Imperial Artesian Well

This item was discussed during accounts payable, see agenda item #III. TXDOT has sent their final payment of over \$250,000 which covers the remaining outstanding invoices for the Holladay Well Project except for \$882.47. MPGCD approved payment for the remaining invoices totaling \$882.47 under agenda #III.

X Consider and/or act upon Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, Water Analysis

Registrations are still coming in, but there are still several hundreds that need to be registered. We do not have any pending production permits. We do have some Notices of Intent to drill applications for exempt wells. Data Loggers with satellite capability are being installed around in the Sandridge area. The number of monitor wells are being increased.

Water analysis are still being performed. Mike Gershon (attorney) and Randy Williams (hydrologist) has informed Manager Weatherby that if it applies to the water that comes into our county and we have the landowners permission, that we can pull water samples and monitor static water levels even though it is out of our District boundaries. I will have this in writing from them before proceeding. This is of utmost importance, due to our recharge area being in Brewster County. The only monitor well we currently have beyond the Pecos County line is the Brooks Ranch monitor well about 70' to 100' in Brewster County. The ranch is partly in Pecos County and partly in Brewster County.

XI General Manager's report on incoming Groundwater District Correspondence

- Randy Williams has submitted a contract proposal for hydrology services, the company name is Bar-W Groundwater Exploration, LLC
- In your information folder, you have an Executive Summary that was prepared by Mike Thornhill
- MPGCD will take over the annual measurements from the Texas Water Development Board that occurs in December each year. There are approximately 65 wells, and we will get static readings bi-annually if possible
- A Texas Alliance of Groundwater Districts (TAGD) meeting will be on April 29th in Austin. Let Paul know if you would like to go.
- Several legislative bills were briefly touched on, they are:

HB1816	Exempting acres under brush control burns from tax
HB3494	Texas Water Development Board changing DFC reports
HB 1890	Injection well applications
HB 569	Commercial Injection wells
HB 177	Monitoring wells for injection wells
HB 4743	Terrell County Groundwater Conservation District formation
SB 2320	Fee based districts
SB 2008	Exempt wells related to Desired Future Conditions

XII Consider and/or act upon Agenda for next meeting

Randy Williams contract, Rule modifications, Elect new Director, Elect Secretary/Treasurer

XIII Adjourn

Lynn Holland made a motion to adjourn, seconded by John Dorris. The motion carried, and the meeting adjourned at 3:38 pm.

S. Evans Turpin, Acting Secretary/Treasurer

Glenn Honaker, President

Date Approved

Attachment #A Excerpts from House Bill 4805 for Quick Reference

Sec. 1003.004 District Territory.

(c) The district may annex land as provided by Subchapter J, Chapter 49, Water Code, or other law regardless of whether the land is contiguous to the district if the land is located not more than 130 miles outside the initial boundaries of the district as described by Section 2 of the Act creating this chapter and if the district determines that the annexation is necessary or convenient for the district to:

- (1) exercise its powers under this chapter; or
- (2) supply water from a water source to a municipality or other political subdivision.

Sec. 1003.101 General Powers & Duties

(b) Except as otherwise specifically provided by this chapter, the district may not exercise its powers more than 130 miles outside the initial boundaries of the district as described by Section 2 of the Act creating this chapter.

(d) If a provision of Chapter 49, 51, 53, or 54, Water Code, is in conflict or inconsistent with this chapter, this chapter prevails. If there is a conflict between a provision of Chapter 49, 51, 53, or 54, Water Code, and a provision of another chapter listed in this subsection, the district may operate under either provision, and it is not necessary for the district to designate the law under which action is being taken.

Sec. 11003.103 Contracts to Supply Water

(d) The district may purchase, sell, treat, transport, and convey water inside and outside the boundaries of the district.

(e) The district has all rights, powers, and privileges necessary or useful to enable the district to acquire, provide, supply, deliver, transport, treat, or sell potable or nonpotable water for any beneficial purpose in the district or in territory located:

- (1) not more than 130 miles from the initial boundaries of the district; and
- (2) in Pecos, Crane, Upton, Ector, or Midland County.

Sec. 11003.104. Sources For Water; Acquisition Of Land; Storage Capacity.

(a) The district may acquire, construct, or develop inside or outside the district sources for water, including one or more reservoirs or wells and any work, water field, pump, plant, transmission line, or other facility necessary or useful to develop, divert, impound, drill for, pump, store, treat, or transport water, including groundwater, to the City of Midland or another entity for municipal, domestic, industrial, mining, oil flooding, or other useful purposes.

(e) The district may develop or otherwise acquire sources of groundwater.

(f) The district may acquire water appropriation permits directly from the Texas Commission on Environmental Quality or from owners of permits.

Sec. 11003.106. Eminent Domain. (a) Notwithstanding any other law, this section applies in addition to any other authority granted by this chapter or other law.

(b) Subject to the limitation in Subsection (d), if the district contracts under this chapter with a municipality or other political subdivision of this state to supply water from any public or private source, the district may exercise the power of eminent domain to acquire the fee simple title to or other interest in land, easements, or other private property located inside the district or not more than 130 miles from the initial boundaries of the district for any purpose under this chapter.

(c) Section 49.222, Water Code, applies to the district's exercise of eminent domain powers under this section.

(d) Before exercising the power of eminent domain to acquire land, an easement, or other property, the district shall first attempt to acquire the property by good faith negotiation.

Attachment B

**RESOLUTION
OF THE BOARD OF DIRECTORS OF THE MIDDLE PECOS
GROUNDWATER CONSERVATION DISTRICT
MEETING HELD APRIL 21, 2009**

**A RESOLUTION OPPOSING CERTAIN LEGISLATION FILED IN THE 81st
LEGISLATIVE SESSION**

WHEREAS, the Middle Pecos Groundwater Conservation District (the "District") is a political subdivision of the State of Texas organized and existing under and by virtue of Article XVI, Section 59, of the Texas Constitution, and a groundwater conservation district acting under Chapter 36 of the Texas Water Code and the District's enabling act, Act of May 26, 1999, 76th Leg., R.S., ch. 1331, 1999 Tex. Gen. Laws 4536 (Senate Bill 1911), as amended by Act of May 24, 2001, 77th Leg., R.S., ch. 1299, 2001 Tex. Gen. Laws 3177 (House Bill 1258);

WHEREAS, Section 36.0015 of the Texas Water Code provides that groundwater conservation districts are the state's preferred method of groundwater management, created pursuant to the Conservation Amendment of the Texas Constitution for the purpose of conservation, preservation, protection, recharging and prevention of waste of groundwater;

WHEREAS, the District is aware that legislation to create a water district within the boundaries of Midland County has been filed during the 81st Texas Legislature, Regular Session, and could likely have an adverse impact on the District's ability to achieve its statutory purposes;

WHEREAS, this proposed legislation, House Bill 4805, proposes to create a water supply district (a "water district") with expansive powers set forth in the legislation and under Chapters 49, 51, 53, and 54 of the Texas Water Code, and provides the water district with the authority to purchase, sell, treat, transport, and convey water inside and outside the boundaries of the water district; provides the water district with all of the rights, powers, and privileges necessary or useful to enable the water district to acquire, provide, supply, deliver, transport, treat, or sell potable or nonpotable water for any beneficial purpose within the water district or in territory within 130 miles from the initial boundaries of the water district and in Pecos, Crane, Upton, Ector, or Midland Counties; allows the water district to acquire, construct, or develop sources of water and distribution facilities inside and outside of the boundaries of the water district for delivery to the City of Midland or another entity and to acquire land or an interest in land for any work of the water district; provides that the water district may purchase water or a water supply from any person, including a public agency; authorizes the water district to develop or otherwise acquire sources of groundwater; and enables the water district to acquire water appropriation permits directly from the Texas Commission on Environmental Quality or from owners of permits;

WHEREAS, the District recognizes that Chapter 36 of the Texas Water Code, including Sections 36.113-36.115 and 36.122, establishes requirements for permitting groundwater wells and groundwater production, and authorizing groundwater transfer outside the District's boundaries, and that the District has implemented these requirements by adopting rules and processing permit applications and requests for authorization to transfer (including Upton County Water District and Waha Storage & Transportation, LP).

WHEREAS, upon deliberation, the District's Board opposes House Bill 4805 and any other similarly worded legislation filed during the 81st Texas Legislature, Regular Session, or a special called session of the Texas Legislature, that proposes the creation of any entity that would compromise the authority and jurisdiction of the District, and the District's statutory purposes; and

WHEREAS, after considering the District's statutory purposes and objectives, the District's certified groundwater Management Plan, and the provisions set forth in Section 36.0015 of the Texas Water Code, the District is of the position that House Bill 4805 or any other similarly worded legislation would contravene the authority and jurisdiction of the District, and the District's purposes.

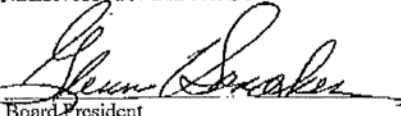
NOW THEREFORE BE IT RESOLVED THAT:

The District's Board of Directors hereby declares the District's formal opposition to House Bill 4805 and any other similarly worded legislation that could adversely affect the authority and jurisdiction of the District and impair the District's statutory purposes, and hereby adopts the recitals herein in support of its resolution opposing the stated legislation.

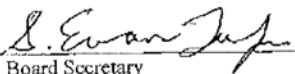
AND IT IS SO ORDERED.

Upon motion duly made by Director JOHN DORRIS, and seconded by Director LYNN HOLLAND and upon discussion, the Board voted 8 in favor and 0 opposed, 0 abstained, and 3 absent, and the motion thereby PASSED on this 21st day of April, 2009.

MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

By: 
Board President

ATTEST:


Board Secretary

**The motion above was amended by motion of Director Bart Reid, seconded by Director Houston McKenzie, and with the approval of movants, Directors John Dorris and Lynn Holland. This amendment is reflected in the recitals of the Board resolution and was, upon discussion, adopted by Board vote of 8 in favor and 0 opposed, 0 abstained, and 3 absent.