

Middle Pecos Groundwater Conservation District

Minutes of January 19, 2010

On this the 19th day of January, 2010, 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
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
Jack McIntyre	Precinct 1
Merrell Daggett	Precinct 2
Lynn Holland	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4
Vanessa Cardwell	City of Fort Stockton
S. Evans Turpin	City of Iraan
Houston McKenzie	At Large

Members Absent: Ronnie Cooper

Others Present: Paul Weatherby/General Manager, Mike Gershon, MPGCD Attorney, Melissa Mills/Office Manager, Bill Johnson/MPGCD Field Technician, Bob Varmette/Fort Stockton Pioneer, Darcey Lynch, Sherry Phillips/Mayor of McCamey, Juan Castro, Waclay Pullanez/Brewster Commissioner, Conrad Arriola, Madge Weatherby, Alyson Weatherby, Tom Beard, Marcos Montes, Jeff Williams, John Carpenter, Janet Adams, Manuel Hernandez, Phyllis Inman, Dr. Jim Duke, Michael Thornhill & Darrell Peckham/Fort Stockton Holdings-Hydrogeologist, Weldon Blackwelder, Bruce Scrafford/FSH Attorney, Ed McCarthy/FSH Attorney, A F Carpenter, Robert Rendell, Delvin Thurman, Rocky Rives/MPGCD Auditor, Cynthia Hollander, Janey Lindsey, Nan Owen, John Evridge, Gary Drgac, Winston Pfiester, Rosie Ramirez, Libby Redwine, Arna McCorkle, Delma Urias, Patrick Bliznak, Megan Wilde, Jay Johnson-Castro, Art Orona, Mayor Ruben Falcon/Mayor of Fort Stockton, Billy Espino/Fort Stockton City Councilman, Russell Johnson/City of Fort Stockton Attorney, Martin Adams, Ray Hendryx, Harvey Gray, Paul Dionne, Zan Matthies, George Riggs, D A Harral, Ann Daggett, Thomas Kincaid, Jr., Cuco Rangel & Shirley Smetak/Pecos County WCID#1, H Sibley, Ernest Woodward, Lowell Woodward, Bonita Gibson and Laura McKenzie

Note: Members of the media that were present to video record the meeting are City of Fort Stockton, Channel 9 and Channel 7.

A Special Meeting for the Fort Stockton City Council was called, in conjunction with the Middle Pecos Groundwater Conservation District. Mayor Falcon called the Special Meeting to order at 1:00 p.m. after declaring a quorum present.

Call to Order. The MPGCD meeting was called to order at 1:07 pm by President Glenn Honaker. Quorum is present.

I Consider and/or act upon minutes November 17, 2009

Vanessa Cardwell moved, Lynn Holland seconded that the minutes of November 17, 2009 be approved, and the motion passed unanimously.

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

Mr. Honaker asked that all comments related to agenda item #7 be held until that item was brought up before the board.

Jay Johnson Castro, Executive Director of the Rio Grande International Study Center, introduced the RGIS Center to the Board through a power point presentation. The organization has existed for 16 years. Its focus is the status of Rio Grande's quality and quantity. Their mission is "To preserve, protect, and foster respect for the Rio Grande – Rio Bravo, its watershed, environment and cultures through research, education, and bi-national stewardship and alliance with individuals, agencies and organizations". Currently the watershed encompass' 8 states; 3 states in U.S. and 5 in Mexico. The Pecos River is part of the watershed that flows into the Rio Grande. As an organization, they speak for the river.

There are approximately 10 million people that depended on the water that flows down to this international body of water. Pecos County is included in The International Boundary & Water Commission's domain whereas Midland County is outside of the domain and the watershed.

The water issue presented by Fort Stockton Holdings has been reviewed by the RGIS Board of Directors and they have unanimously passed a resolution to join with Pecos County, City of Fort Stockton and the Middle Pecos Groundwater Conservation District to prevent transfer from the watershed to any other territory. The reason for this alliance is that industry, agriculture, commerce and citizens depend on the tributaries that flow into the Rio Grande watershed. Their view is that I-35 & I-10 should not have predominance of Texas water when there are millions of people that depended on that water on both sides of the river.

President Honaker interrupted Mr. Castro as his comments drifted into matters related to agenda item #7, and asked him to withdraw his statement in regards to the MPGCD being in an alliance. This is false because the MPGCD has not entered into an alliance. MPGCD is in charge of hearing the permit application.

Director Castro apologized and stated that they would continue to support the community on this issue.

III Consider and/or act upon Accounts Payable and Treasurers' Report for 11-30-2009 and 12-31-2009, Line Item Transfers

Lynn Holland made a motion to approve the accounts payable and both Treasurers' Reports. Seconded by Alvaro Mandujano, Jr. Motion passed.

IV Consider and/or act upon Audit for Fiscal Year 10-01-2008 through 09-30-2009

Mr. Rocky Rives with Smith and Rives, PC from Monahans, Texas, was present to review the completed audit with the Board of Directors. He reviewed the main section of the audit – page by page- and stated that there are no findings disclosed for which corrective action is needed.

Houston McKenzie made a motion to accept the audit for Fiscal Year 10-01-2008 through 09-30-2009. Seconded by Evans Turpin. Motion passed.

V Consider and/or act upon 2010 Regular Board Meeting Dates and 2010 Holiday Schedule

Merrell Daggett made a motion to accept the 2010 Regular Board Meeting Dates and 2010 Holiday Schedule. Seconded by M. R. Gonzalez. Motion passed.

VI Consider and/or act on approval of assignment of tax abatement agreement from SandRidge Energy, Inc. to Pinion Gathering Company, LLC.

Manager Weatherby stated that there has been a change in ownership, and that the terms of the previous agreement will remain unchanged with the new ownership.

Mike Gershon, MPGCD attorney, reported that he has been in contact with Pinion Gathering Co., LLC's attorneys, and new language has been inserted that requires that MPGCD pass a resolution acknowledging the assignment due to the transfer/conveyance of property of the Grey Ranch property. The resolution will not impact the tax abatement agreement.

Lynn Holland made a motion to approve the resolution as presented for the assignment of the tax abatement agreement from SandRidge Energy, Inc. to Pinion Gathering Company, LLC.. Seconded by Alvaro Mandujano, Jr. Motion passed unanimously. 10 votes in favor, and 1 absent.

President Honaker recessed from the meeting at 1:47 p.m. for a short break.

The meeting reconvened @ 2:00 p.m.

**VII Consider and/or act on matters related to determination of administrative completeness of permit applications, including but not limited to Fort Stockton Holdings, LP's pending permit application.
Working minutes for 01-19-2010**

0:55:34 Reconvene at 2:03 pm

Agenda Item 7 Fort Stockton Holdings Verbatim

President Honaker: We are on agenda item #7: Consider and/or act on matters related to determination of administrative completeness of permit applications, including but not limited to Fort Stockton Holdings, LP's pending permit application. I know there is a lot of interest in this agenda item. There are a lot of people here today which we are glad to see. What we – our plan today here is, let me kind of explain it here at the first, and then we'll proceed onward. As I said I'm going to give time for public comment after we cover some points in our agenda item. To begin with I'd like our General Manager to bring us up to speed on this agenda item. Then I'd like to give the applicant an opportunity to offer any remarks that it has, and then if there is any public comment related to this agenda item, we'll allow some time for those.

Just a little bit about what's relevant and what comments are and are not appropriate. I do want to be clear what the Board is looking at here and just as importantly what we are not considering today. Today's agenda item relates to whether Fort Stockton Holdings has provided certain information that our General Manager has requested. If we believe they have then we can probably declare the application administratively complete soon and get on with setting a hearing for the Board to consider and take action on the merits of the application. If we do not believe they have provided all the information we need, then we are at a standstill. We can't process the application in that case. I ask that all comments be focused only on that question. We just can't get into the details on the merits of the application. It's not appropriate. We need 10 days notice, and we have to have already declared the application administratively complete. So with that I will turn it over to the General Manager of the Board for his briefing on the application.

0:58:24

Paul Weatherby took the floor.

Thank you. What we have today is called addressing the amended application for a production permit authorization to export water submitted to us by Fort Stockton Holdings LP. I received this amended application on September 28, 2009. The application is for 47,418 acre feet a year for the use potable water and/or industrial use. Those are the two uses that are stated on the amended application. Since received this amended application – It's my responsibility along with our attorney to review all details. And submit it to you Directors to decide on.

We have had this application before us before, before it was amended and it was declared administratively incomplete. All parties have worked together to try to get to that point. As of today, I as General Manager am declaring this application administratively incomplete. And I am going to give you the issues that I have for that recommendation.

(1:00:18)

1. Statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose, that is in the Texas Water Code clearly defined under state law – the Applicant does not have any firm customers, has not produced any agreements or leases that commit to supply water or provided some other demonstration of the proposed purpose, and has not otherwise shown that it has a real need for this water. The examples of possible municipal uses “purveyors within the Texas Water Development Board’s State Water Plan ‘Region F’ Planning Area” and possible industrial uses “e.g., manufacturing, electric generation, coal plants, Oil & Gas, etc.” and the possibility of providing up to 10 million gallons per day to Summit Texas Clean Energy, LLC, they have indicated in public that it has other sources available. All this does not meet the District’s requirements on this application. This a speculative-type application in my interpretation to you Directors (1:01:46) this speculative-type project cannot demonstrate how the water will be put to a use for a beneficial purpose; neither the Board nor other potential protestants can determine what effects there could be from pumping at a different rate and at different times than historical production for irrigation from Fort Stockton Holdings has. In accordance with statutory mandate, districts’ permitting programs are designed around drilling and operating wells, yet the Applicant has not shown that it has a need to operate the wells for its proposed purpose, for this proposed purpose, within the foreseeable future – for this export of water. It appears that the Applicant has applied for this permit prematurely. Just under a speculative type request.
(1:02:54)
2. (1:02:57) Location of use of the water – identification of the Texas Water Development Board’s State Water Plan “Region F” Planning Area as the location of use is too broad and inspecific, and indicates that there is no real end-user for this water. Moreover, there are over 100 utilities and numerous industrial users located within “Region F,” area that are in business to supply potable water to their respective communities or areas. None of whom have identified the Fort Stockton Holdings project or the Edwards-Trinity aquifer that lies beneath the boundaries of Pecos County, None of them has identified them as a potential source of water supply now or in the future for potable use or industrial use – they just don’t exist in any of the public or private planning documents within “Region F” . So the location of use as defined in this document is just way too broad.
3. (1:04:34) The date the permit is to expire if no well is drilled – the District’s rules provide that this requirement also extends to existing wells that might be used for a different purpose that would require reworking the existing well and/or complying with other regulatory requirements. I see that existing wells are intended to be used for irrigation, municipal/potable use, and/or industrial use from the same wells and this permits seems to be use for one of those three purposes, but I do not see where in the application the issue of compliance with other regulatory requirements is addressed, including requirements of the Texas Commission on Environmental Quality.

4. (1:05:37) Estimated rate at which water will be withdrawn from each well (gallons per minute and rate/amount per year) – Attachment “C” to the Application reflects average and maximum rates, but not the rate/amount per year. Attachment “C” actually reflects a “Proposed Pumping Rate” of 76,801 acre feet per year, with a footnote stating that the Applicant seeks authorization to produce and transport up to 47,418 acre-feet per year. Another footnote states the average pumping rate for each well is based on each well pumping at its maximum capacity for 16 hours per day. These statements are mutually inconsistent, and require clarification of the estimated rates of production.
5. (1:06:54) I will state you what I did put on #5 but I want to instill a fact that there’s a possibility that I’m only misreading the documents that Mr. McCarthy submitted to me but I haven’t clarified it in my mind. This is not a minor issue, but it might be cleaned up in just 10 minutes once I get my mind in the right place or understand how they submitted these documents, but it has to do with the name and mailing address of the owner of the land on which the wells will be located (if the owner is different from the applicant) – the District is aware that Fort Stockton Holdings does not own all of the 18,510.61 acres identified in the application on which some wells are or may be located and the District has not received the required information under this circumstance.
6. (1:08:03) Documentation establishing the applicable authority to construct and operate wells if the applicant is other than the owner of the property – this documentation has not been submitted for all the acreage identified in the application. Some of this property is not owned but rather is leased. The applicant alleges that he has leased properties in there, but I have no documentation from the owners of the properties that he has leased from has given him permission to do this.
7. (1:08:58) Applicant’s reservation of rights typed on page 3 of the amended application, if you’re on the right page, you’ll see where Mr. Latham signed off on July 8, 2009; the applicant’s reservation of rights typed on page 3 of the application form is unacceptable. This reservation of rights qualifies the required “Declaration” on page 3 and compromises the effect of that “Declaration,” rendering the application deficient for failure to agree to the terms of the “Declaration”. The Applicant is requested to resubmit page 3 with the reservation of rights language omitted.
8. (1:10:06) A document indicating adjacent owners’ physical and mailing addresses.
9. (1:10:16) A drought contingency plan.
- 10.(1:10:20) A map or other document from the Pecos County Tax Appraisal District indicating the ownership and location of the subject property.

I know that there have been multiple communications within and outside District Board meetings on many/most of these issues. I know that Fort Stockton Holdings' other attorneys have provided Fort Stockton Holdings' position on the first two issues to me. I believe that I fully understand Fort Stockton Holdings' position on those 2 issues. There is a difference of opinion on these two issues. At this point, it seems in everyone's best interest to put these two issues, number one and two - today, before the Board for their review and possible action and clarification. It is my understanding, and I know there's no problem with this for us or Mr. McCarthy that we want to continue working on the remaining issues and get them cleared up – this has been talked about for months and months. That is their judgment call to make, and we can certainly address those issues at a later date after today. I just want to re-emphasize the fact that even though these 10 issues, in my opinion, justify this application being administratively incomplete – that the first two are the ones that I continue to challenge that they will never be able to meet, in my opinion. (1:12:38) The others we can work on and get approved. Ok, Glenn.

Glenn: Thank you Paul. Does the Board have any questions for Paul at this time?

Houston: Paul, you said those first two issues, they would never be able to meet. What does that mean?

Paul: That it is my opinion that they will never be able to satisfy those two questions. Period.

Houston: In other words we will never be able to accept a complete application from them.

Paul: They will give you their opinion on this certainly. I'm just saying that according to statutory law that I have to go by, the way I work as General Manager, protecting this stuff – trying to sort it out, and I'm certainly no attorney, our focus is on this number 1 and 2 issues. These others I believe we can work out in time.

Houston: But if they'll never be able to meet the first two – it seems to me that maybe there's no use in working on the rest of them.

Paul: Well, y'all's decision – you'll have, I assume they'll present their position on this - as we work our way through this that will have to be decided. (1:14:00) I just don't have the authority to declare it administratively incomplete and send them to the house. It has to go to the Board. But, that's my recommendation.

Glenn: Thank you Paul. Mr. McCarthy would you like to address the Board? I believe the Board has your letter of January 15th before them and your briefing. If you would like to make any statements to the Board – you are welcome to at this time.

(1:14:38) Thank you Mr. Honaker, I would. Do you prefer that I speak from here or the podium? (Glenn: The microphone would be easier, you wouldn't have to shout as bad.) Good afternoon, my name is Ed McCarthy, attorney for Fort Stockton Holdings and have been working on the application that we filed back in July and have submitted several supplemental filings in support of that application to address those issues that have been identified by the District. I would like to start out by saying that what we are looking at from Fort Stockton Holdings' perspective is – what we are looking for the Board to do is provide a ruling on first – this afternoon Mr. Weatherby says 2 issues I think he combined a couple, I actually have them as 3 issues, but 3 issues that if the Board agrees with Mr. Weatherby we probably can not – in the near future – provide an administratively complete application on those issues – I will talk about those in a minute. The other 7 issues that Mr. Weatherby identified, I think are easily resolved, probably already are resolved as part of the filings that have been made. I will clarify some things with Mr. Weatherby in those filings so that he can see them. Those last 7 items were only identified to us some time sometime Friday evening – we got a fax around 5:00 at my office, and was the first that I have heard about those specific issues. So we haven't had a chance to respond to those and would hope that we would be able to meet with Mr. Weatherby and consultants to address those. But it seems that the most important thing we have to do is cross the threshold issues that Mr. Weatherby has addressed that in his opinion he thinks that Chapter 36 or some other statute none of which has not been identified to me, prohibits this Board from considering an application administratively complete.

I think that the actual definition of administratively completeness which is not something that is defined by the statutes and is subject to interpretation is being interpreted in this case a bit over zealously and with requirements that are not, not only not included in the statute, but not authorized by the statute. And those are the things I would like to focus on this afternoon.

(1:17:15)

First - Mr. Weatherby's position is that we can not have an administratively complete application until we turn in copies of contracts or some other evidence of a firm commitment of customers for the water we would use, that in the absence of that there's no beneficial use that can possibly be put to the water. First Chapter 36 this District's enabling legislation and no other piece of statutory authority that I am aware of, authorizes a District to require an applicant to present a contract from a third party for use of the water that they would make – even in the instance of an application for municipal/potable water or industrial purposes. (1:17:58) In addition to the fact that I don't believe that current law provides for that – as part of our briefing we provided you with a copy of Senate Bill 1714 that was filed by Senator Hagar last session in which he attempted to get into Texas Law the ability of a District to make a requirement similar to that – that legislation passed. (1:18:18) Senator Hagar's legislative intent was articulated in the Senate Journal – we've provided you with a copy of that. It makes clear his belief that District's should have that power and that's why he filed the bill. The bill did not pass it's not law. (1:18:31) Districts cannot require a contract in order to process a permit and determine it administratively complete. That is **Fort Stockton Holdings'** position on that issue.

With respect to we can't have an application for beneficial use absent those contacts I would point to you that by statute both municipal use and industrial use of groundwater are defined to be beneficial purposes and beneficial uses of groundwater. The legislature has told you that an application for those purposes is of beneficial use. Therefore, we have satisfied that requirement. By legislative mandate. As part of our brief – I will tell you there's no law (1:19:19) in the groundwater? – There's no case law interpretation yet. And, I really hate to start looking for it now. But what we did provide for you in our briefing is copies of statute and case law interpretation where the courts have said that in the surface water arena, the legislature has defined municipal and industrial use to be beneficial purposes. In that same context, Texas courts have also said (1:19:48) the fact that an application comes in and seeks the right to use state water – not privately owned water as we are seeking to use here – but state owned water that the state can not deny an application on the basis that there's no contract for the use of that water by a third party. Those cases are cited in our briefing. I believe they are applicable here, and I urge you to consider that.

(1:20:17) The second major issue that Mr. Weatherby has addressed is the question of when will the permit terminate if no well is drilled, or as he indicates the Districts rules address existing wells, modifications of those. There's a bit of a chicken and egg situation here, but again for the purposes of administrative completeness – what I want to point out to you is that our application is very fair. We are seeking authorization with a 5 year window or a 50 year window. (1:20:44) Depending on upon whether construction of a pipeline is commenced and if it is – then we look to the 50 year window. We have a box we have to work in. Within that first 5 year box after the granting of an application, assuming the application is granted and the permit is issued, we have a lot things we have to do, we have to start construction of a pipeline, if we are going to start construction of a pipeline – I'm pretty sure that my client is going to want customers – they are not going to spend hundreds of millions of dollars to build a pipeline to move water to no where. That doesn't make sense. It wouldn't make good business sense. We have a 5 year window in which to do that. With respect to compliance with other regulatory programs – it goes without saying – we don't have to tell you we will comply with other statutes, the law is going to make us comply. But on top of that it doesn't make sense for us to go to TCEQ and make application for modification of wells so that they meet potable water standards or industrial water standards or to meet the standards of whom ever may be a customer of ours until we get a permit. That's the chicken and egg, we have to have a permit – once we have a permit, we have obligations we will pursue. This Board can be certain and will police us that we'll follow the District's rules and regulations and statutes with regards to the permit that is issued and we will comply. If we don't comply with TCEQ regulations, it doesn't matter whether we have a third party contract – we're not going to be able to pump water and send it them anyway. So there are a lot of built in safe guards. The legislature went and created in Section 36.122 Transport Permits and Authorization for Transport – it said Districts shall issue transport permits for a minimum of 3 years if there is no construction of a pipeline or a minimum of 30 if there is. It's a minimum not a maximum. It's not the standard. We've asked for 5 years as a reasonable time in which to do the things and take the steps we need. Within that time we will have to comply with all applicable regulatory requirements, whether it has to do with TXDOT use of Right-of-Ways, whether it has to do with quality of water that we are delivering to customers

(1:22:49) and that municipal entity for municipal or retail system has it's own rules – or whether it's the TCEQ rules with respect to the wells or with respect to the quality of water we are producing. We will comply. If we need to put that in writing, we will, we'll be happy to comply – but I believe our application on it's face already does.

(1:23:17) The third issue that we are looking for a ruling from the Board on is the issue of location of use. Mr. Weatherby has tied this back in part to the beneficial use concept that we don't have contracts and we don't have a location that we can point to as a place of use. Again, I would say that the Texas courts have addressed that issue on it's surface water contacts which is analogist in this context. But beyond that, Region F is a statutorily defined, or actually defined by rule making, but the rule making is statutorily mandated by the legislature, the Water Development Board has developed Region F as a planning group. Region F has done a water planning study, it has identified in it's most recent regional plan in excess of 200,000 acre feet of deficiency (1:24:05) in it's demands in the near future and the long term. It has also identified the possible sources to meet that demand including a minimum of in excess of 30,000 acre feet of water per year from new groundwater sources. Yes, no where in the Region F plan or in the state water plan does anyone say anything about Fort Stockton Holdings. But that's not a requirement of the statute for you to process our application or grant our application. That's not a road block that we have to cross right now. If we don't get contracts – we don't deliver water outside of Fort Stockton. And there's no harm – no fowl – to the District. The idea that it's speculative and we would tie up this water forever is also without merit. Again, we have this 5 year window up front that we have created. On top of that, and probably the most critical (1:25:01) is the thing that I want to remind this board is that we have been talking to the District for years about this project, we came to the District we've talked about the study we were going to do on Hydrological issues. We did the study, we came back and presented the study, report, did a presentation to the Board on the report; and we showed that there was well in excess of 100,000 acre feet of water that would be produced from the area reaped by the Edwards/Trinity – not the whole District – just the area we are looking at that could be produced and beneficially used. Everybody was scared to death that we were going to take the 48,000 acre feet of existing historic use permits and double them. And come in with a new application for an additional 48,000 acre feet of water, and absorb all the additional water that everybody thought was available. We didn't do that. What we did is say we have these permits and we don't want to take all the water. We know we can use this much water – historically we've used a heck of a lot of water. The District has already set aside all of this water in our historic use permits. What we'll do is we will agree (1:26:22) that we'll file an application for a new permit and for every acre foot of water that we use for municipal or industrial purposes under this permit – we will not produce an acre foot on our historic use permits. Instead of having 98,000 acre feet of permits – we're going to stick to less than 50,000 – in fact we reduced our application amount to the 47,418 acre feet so that it coincided with the permits we have in the Edwards/Trinity. We didn't rely upon the numbers in any of the other aquifers. So we've done a lot. This District has already set aside that water, it's already accounted for, it's not available to anybody else. All we're asking for is to use our own water. Now if we can't do that, then we have a big problem. (1:27:12) But when we go to use that water – this smaller subset of what you thought we were going to use - and we say we are looking at potential municipal and industrial customers in Region F – it is a defined area, it's a well

known area, there's a state water plan with studies and input from all the regional stakeholders saying how much waters needed, what the uses are, what the deficiencies are. Nobody has that 200,000 acre foot of deficiencies made up yet.

Any source that they could get it from I think would be welcome. I think if we build it, they will come. I think we will have customers. I think that if this District follows it's statutory mandate, and constitutional mandate – not only to conserve and protect but to develop the natural resources we have so that we ensure that they are beneficially used. That Region F will benefit, your neighboring communities in West Texas that don't have the water they need will benefit. Now we've looked at Region F – and the criticism of using that as our target, and we've come in and supplementally filed as we've reduced down from all the counties in that Region to 22 counties. All of whom in the state water plan – the Water Development Board's state water plan – showed that they have a need for water. Couple that with statutorily defined beneficial use of municipal and industrial purposes, we have beneficial use. We have a location of use. We have the ability for this Board and anyone who if this becomes a contested case who wants to come and contest it, to measure and balance the equities or the statutory requirements between what's going on in those counties in Region F and what's going on in the District. (1:29:08) The first thing I challenge them to do is to show that the water we're going to use, propose to use under the new permit is available to right now anyway. Because it's not in the old permits?. (1:29:19). As I've said the other issues identified today that Mr. Weatherby sent to us on Friday, we are prepared to address, and I will honestly tell you that the majority of those seven items are legitimate administrative completeness determinations – I think we've answered them, but they are proper for administrative completeness. The issues that Mr. Weatherby, the first 3, the ones I need a ruling from you on each of go not only beyond administrative completeness, in some instances they may go to the merit of the application. But in any event our position is – you don't have the statutory authority – even in the determination of the merits of the application to consider most of those items. (1:30:06) And or we've already satisfied them.

So I would ask for you today to rule that the first three issues: the no contract, beneficial use, firm commitment issue, the date the permit will expire issue, and the location of use issues are not appropriate determinations for administrative completeness beyond what we've already filed. And after that, I'd ask that we be given sufficient time to meet with Mr. Weatherby, his consultants and his District's counsel to clarify the other seven issues. Make sure we have all that information. And address those in due course. With that I thank you for your time. I'd be happy to answer any questions.

Houston: (1:31:02) Does Fort Stockton Holdings plan to build this pipeline without any firm customers? Surely you guys have to have somebody lined up before you invest that money.

McCarthy: (1:31:16) We have already provided the District with copies of letters of intent, letters of interest. During the legislative session we also provided letters expressing interest from others. We are looking at that 5 year window, as a period.....as soon as we get the permit, we think we'll have no problem getting people signed up. Right now what we are hearing is "Well you don't have a permit, how are you going to get me the water? I don't want to invest our resources to negotiate with you until you get a permit."

So within the 5 year period, and to answer your question, we're looking to firm up contracts, build a pipeline, go get any TCEQ required modifications for potable systems. All of those things, and any other amendments we need to file with the District related to re-working and replacing wells – we would do it at that time. (1:32:03)

Glenn: Any other questions from the Board for Mr. McCarthy? Thank you Mr. McCarthy.

McCarthy: Thank you Mr. Honaker and members.

(1:32:25) Glenn: At this time we'll take the registration forms for requesting to make public comment. At this time I'll recognize Neill Woodward.

Houston: He asked me to sign him up but that he might not make it back in time to speak. He isn't here at this time.

Glenn: We'll dispense with Neill's presentation. If he comes in, I give him the opportunity to say something before we leave this agenda item. The next submission is Mayor Ruben Falcon.

(1:33:23) Mayor Ruben Falcon: Good afternoon. The citizens of Fort Stockton are extremely concerned with this application. The city council, on Tuesday, January 12, 2010; passed two resolutions which I will bring you. The first two has a seal, one for yourself, and one for the President. There should be one copy for everyone on the Board. The City Council can answer your questions and passed resolutions and hired outside council to help us with this. And we have hired professionals to help us with the study of our wells. And also to join with the study that USGS is doing. If you grew up in Fort Stockton – in the 3rd grade you'd get a history of how we came to be here. It would start with water and would end with water. Therefore that is our concern that it is going to cost the city a lot of money. We have not heard from one citizen that shows that to be a concern. I will yield that there a couple of other city people that want to talk. I just want to make sure that y'all understood the City's part and the reason for passing the resolutions. Do you have any questions?

Glenn: Do we have any questions from the Board for Ruben?

Ruben: Mayor please.

Glenn: Mayor Falcon.

Ruben: Some people have a hard time swallowing that pill.

Glenn: Excuse me. Thank you Mayor Falcon. I appreciate it. The next request is Rafael Castillo, Fort Stockton City Manager.

1:35:26

Rafael Castillo, Fort Stockton City Manager requested to speak, but once he was called he said his comments were already covered.

Glenn: The next one is from Mr. Russell Johnson. Please introduce yourself.

1:35:49

Thank you Mr. President – I am the afore-mentioned attorney retained for the City of Fort Stockton. My name is Russell Johnson, in partner with the law firm McGinnis, Lockridge & Kilgore in Austin Texas. I have been retained by the City of Fort Stockton to assist them in matters related to the application filed by Fort Stockton Holdings, LP.

Let me start by saying that your General Manager outlined or framed the question which is the application of Fort Stockton Holdings administratively complete? And specifically is it complete without evidence of the amount, place, or type of use?

Here are the facts:

The application seeks a new permit. Not a permit for previous use, but a new permit to produce and export up to 47,000+ acre feet of water for – as stated – municipal and industrial purposes, for use in any one of 22 counties in Region F. Up until last Friday, it was all of Region F. Mr. McCarthy – in his letter – reduced it to the 22 counties that Region F has identified as having future water needs. Not surprising.

This is not a question on the merits of the application; rather, it is a question of determination of whether the application contains sufficient information for the District and parties such as the city of Fort Stockton to properly evaluate the application.

(1:37:33)

As the application currently stands, for the 1st 3 reasons stated by your Gen Mgr, the answer is a resounding “No”. The applicant suggests either that you don’t have the authority to require that the application show a purpose or place of use, or alternatively that their application does provide the necessary information. I am here to tell you that neither of those arguments is accurate.

First the District’s rules and Chap. 36 require that applications show the nature and purpose of the proposed use and the amount of water to be used for each purpose. No where in the application of Fort Stockton Holdings is that demonstration shown or made. There is no indication in the application what amount of water will be put to municipal purposes, what amount of water will be put to industrial purposes – so you have no way to evaluate that application without knowing that information.

Sec. 36.11.31 Indicates that your permit may include specifically the location of the use of the water. Not the area of use of the water as suggested by the applicant, but rather the location of use of the water.

Sec. 36.11.4 An administratively complete application requires the information set forth in accordance with section 36.11.3 and 36.131 as just outlined and they are absent in this application. In the absence of information concerning the location and purpose of use –

the application is as a matter of law not administratively complete. The applicant references surface water law and precedence in surface water law as applicable to this groundwater district – and I suggest to you that surface water law is inapplicable to this groundwater district in its determination of administrative completeness for a number of reasons. Not the least of which is that the surface water is governed by prior appropriations unlike groundwater in the State of Texas.

1:40:01 I want to point out also that the applications and permits that were attached to the very long letter that you received from Mr. McCarthy dated Jan.15, 2010 – with two exceptions involve applications by governmental entities that have a statutory obligation to provide water resources within a multi-county region. So certainly they do not provide any justification for a multi-county application such as is presented here.

(1:40:37) The other two that were private entities that were attached to the letter, were not applications for new appropriations for municipal or industrial, but rather were amendments to existing applications and the rules would be different. So I suggest that those amendments were to clarify the existing authority, not to expand the existing authority in those permits.

Location of use is the language used in 36.113 and 36.1131 not area of use. Only in sec. 36.122 does the code mention area of use, and it is in the context of evaluating the availability of adequate supplies in the area. Clearly authorizing a look at an area larger than the location of use specified in the complete application. So by way of example, if the location of use were the city of Midland, then it would be appropriate for the Board to consider the area surrounding the City of Midland to determine the availability of alternative supplies available to the City of Midland. It does not justify changing the statutory language concerning location of use to an area of use.

Apparently the applicant's argument that they have specified the type of use – is also completely without merit. Each category of use – and I will acknowledge that irrigation of use municipal use and industrial use are clearly beneficial uses. That's not the question here. The question is what use will this water be put to, and by whom, and where. And it's also important to note that each of these categories of use have different patterns of use. Therefore specifying all of them as the potential type of use leaves the District with no information allowing it to determine the impact of the proposed use. Worse – the applicant's argument that they have specified the location of use and that there is a demonstrated need is patently wrong. First of all, until Mr. McCarthy's letter of Jan. 15th the location of use was all of Region F – now of course, it has been narrowed to 22 counties, eliminating those counties that clearly have no need for additional water. Under this argument, any application to any groundwater conservation district in the state of Texas that simply says they intend to put the water to a beneficial use either municipal or industrial and specifying a Region in which there are 15 planning regions in the state – and in each of those planning regions they've identified need for future water. So under the applicant's argument any application in any region in front of any district that simply says "We intend to put this to a beneficial use municipal or industrial within this region – would be administratively complete." This is an absolute absurdity. It renders the provisions of

Chap. 36 meaningless, and there's absolutely no basis for rendering those provisions in Chap. 36 absolutely meaningless.

(1:44:06) In short the application fails to identify location of use, the type of use, or the amount of use for each purpose as is required by your rules in Chapter 36, and is therefore not administratively complete as identified by your General Manager.

As an additional point, the District's rules require that a protestant – such as the City of Fort Stockton – demonstrate some adverse impact associated with the application which would require some knowledge of the nature of the use, the rate of use, the location of use, and the type of use. So, the City is unable in the current state of the application to even demonstrate to the District that it has an adverse impact because we are dealing with this immorphorous – it could be anything, it could be municipal-industrial-it could be over here – or it could be over there – that leaves the City in the impossible position of evaluating all possible ways it could be used, and all possible locations, at all possible rates in demonstrating an adverse impact, which again, is an absurdity.

For these reasons the City urges that you declare this application in its current state to not be administratively complete.

One more thing, your General Manager said that the applicant could never meet the requirements of 1, 2 and 3 – I would say that the application currently does not meet the requirements of 1, 2 and 3. It can be amended to meet those requirements either through the demonstration of a contract or a letter of intent for a specific purpose in a specific location – or the application can be limited to a specific location and a specific purpose at a demonstrated rate of production. Neither of which has occurred today. Thank you, I'd be happy to answer any questions. (1:46:15)

Houston: I guess I'm sitting here thinking that if the water is going to a generating plant – would that make any difference as far as looking at the application than if it was going to a municipality and I'm sitting here thinking that if it's going to a beneficial use that I think we would probably handle it all the same. You're talking about adverse impact – don't we have statutory - how hard is it to stop any adverse impact if he did go to pumping, I mean, don't we have that authority? Don't we have that power to?

Paul: I guess you do.

Houston: To counter the adverse impact on an aquifer.

(1:47:07) Mike Gershon: It's a pretty broad question. In part the answer is, that in light of the Desired-Future-Conditions-setting process and ultimately the managed available groundwater numbers that the Water Development Board will have to develop (which we've talked about in other Board Meetings), part of the answer is that the District certainly has authority to avoid impact to the Desired Future Conditions. To say it another way, we can't impair those Desired Future Conditions which haven't been set yet. We have our Management Plan with goals of how we manage the aquifer that are – to oversimplify – comparable to the Desired Future Conditions. In the absence of those Desired Future

Conditions, right now we are following our management plan. With respect to the possibility of impairing other existing users, part of the evaluation of this application on the merits addresses that. What Mr. Johnson is making a point about with respect to adverse impact is that before we even go to the merits, we look to see if there are potential protests out there who can demonstrate that there's a possibility of an impact to them. The standard to this is (and our rules set out & we've talked about it a lot in our rulemaking) that the City of Fort Stockton would have to establish a justifiable interest in the application; meaning do they have an interest that could potentially be impacted by the requests of the applicant? They don't have to prove that there's an effect – that'll be evaluated during the hearing. But Mr. Johnson's point here is that we can't determine whether there is an adverse effect, because we as a potential party don't have enough information.

Mr. Johnson (1:48:56) And let me add in answer to your question about the nature of industrial use – the industrial use could be anything from a firm demand each month to a widely variable demand depending on the type of industry. You mentioned energy generation, that's a good example of use that might be highly variable depending upon energy needs verses industrial manufacturing use that might be a steady use each month. Same is true of municipal use – we don't know as we are evaluating this whether this municipal use will be a base load use where they'll use the same amount each month, or they will use very small quantities in the winter and use this groundwater to peak during the summer. So we have no way of evaluating the impacts without that information. Thank You.

Glenn: Mr. Johnson, what statutes were you pointing out in Chapter 36?

Johnson: That's Chapter 36 of the Water Code. Chapter 36 section 113, section 1131 – and I referenced section 36.122.

Glenn: Ok, Thank You I appreciate your comments Mr. Johnson

Mike to Glenn: Are there any others? Glenn: That's all we had on our list wasn't it?

Glenn: There are forms available if anyone does want to make a subsequent comment. We will accept one if someone wants to make a public comment if they are not reiterating what we've heard already. Paul did you want to make a closing statement?

(1:51:06) Paul Weatherby:

I would like to just real brief go back over this whole situation with Fort Stockton Holdings. First we had Mr. Paul Latham, CEO for Claytie, Ed McCarthy has been pretty involved and is very resourceful on water law, Mr. Rendall out of Midland, y'all have seen Dr. Duke – a professional engineer, and I apologize if that is the wrong title. I guarantee you he knows a lot about water, and y'all have seen Mr. Mike Thornhill working on this stuff extensively, to my knowledge since we started this with the legislature, Mr. Scrafford came on line, a guy by the name of Carlton – I've forgot his name – anyway we have litigation attorneys coming in at this time. You saw representative Tom Craddick getting involved with the legislature, some of you were there working on these bills prior to getting

this Water Supply District formed. I just wanted to remind y'all that those attempts were not successful in the legislature, and when I say that, that's not just someone listening to me as General Manager. Of course I made a presentation, but there were many landowners, there were people from all over the state, some of them that I have never even talked to came forward to testify. Some of y'all were there at the House Natural Resources Committee, that's an eleven- member committee – I believe there were 7 or 9 actual representatives there that day. Those representatives represent people from all across the country, they didn't see – they didn't show support in the preliminary for these bills being submitted by Mr. Williams through Representative Craddick, other bills, riders on the bills, again there was no support from Senator Uresti who is our State Senator – no support for Claytie on that deal. Representative Pete Gallego, he's been our State Rep. for years – he represents the whole district – you know who he is – no support. I keep referring to Claytie's deal, that's the easiest way for me to say it because they've changed their name from the beginning it's currently – this operation is Fort Stockton Holdings. (1:54:20) I never went to the Senate Natural Resources Committee hearings, I don't think they had one on this matter – if they did, I missed it, but we were there with Senator Uresti and he wouldn't back any of this up.

We, the groundwater district, y'all have declared this application incomplete once before. Some of these issues are the same issues.

We've got the County of Pecos, Pecos County Commissioners Court, has done resolutions against this. The City of Fort Stockton as you well know continues to file resolutions opposing this matter. You've seen Brewster County come out and show their stand in opposition to this deal, along with many other agencies, many landowners, individual responses. They just go on. I haven't seen anybody disagree with y'all on a personal standpoint – just their attorneys supporting this whole deal.

I've always tried as General Manager to provide y'all all the information – good, bad and ugly and on all sides of the fence on every matter for the last 4 ½ years. I am not treating this application any different than anyone else's that we've had come through. We've had production applications – we've had export applications and petitions – we've been through this with other people. I'm treating this fairly and as best that I can in accordance with our statutory mandate. I consider myself a public servant – just as you do – I know that y'all just hired me to do this work, but I consider this as being a public servant. And I want you to clearly understand that I take this job real serious: protecting and preserving our water. And I will advise you that there are currently being some actions taken by Mr. Williams that are completely unacceptable. We are trying to deal with this professionally and go along and argue over issues. As things go along, we can always talk. (With these remain that??) I know it may seem frivolous, especially to the attorneys (1:57:25) including my own, Mr. Gershon – if Mr. Williams was here today, if Claytie was here today – I want him to understand that I do hold him accountable. I've known him all my life. When he gets something going, he is the boss. You will do what he tells you to do, or asks you to do – he foots the bill. I understand that. Respect that. He's done a million wonderful things for this community over the years – continues to do them – but every once in awhile (1:58:15) anyone including myself – we can make a mistake, we can stub our toe, however you want to call it, and I want this – with all due respect to Claytie, and I want him

to understand, that my opinion is he has stubbed his toe. This is a mistake, I would ask him to withdraw his application today. It's premature. There's nothing finalized in those plans, you've heard it said all day long. Just put it on the back burner. Just withdraw it. I understand that there would be 5 or 6 attorneys or whoever the group is, I understand they would huddle up and say don't listen to that crazy Weatherby what's he trying to say – we've got this thing and we're going to get it done. I just hold Mr. Williams accountable for this whole thing. I don't want him to be – to stub his toe. Of everyone, Directors, involved with his application – who lives here? Nobody – they all live somewhere else. They don't care beans about this water. They are paid to do a job, they try to do a good job, when it's over, they'll be gone. We're the ones that have to stay here. At this time, Thank you Chairman. (2:00:07)

(2:00:21) Glenn: Thank you Paul. We appreciate your patience, but at this time we need to adjourn into executive session to confer with our attorney on issues pertaining to this agenda item. So in compliance with the Texas Opening Meetings Act we will now adjourn to executive session at 3:08 pm, it will probably take about 45 minutes and we'll return into open session. Thank y'all for your patience. (2:00:48)

Tape position when the meeting was called back to order: 3:47:12

Reconvene at 4:55 pm

Glenn: We are still on agenda item seven. Let me start discussion with the Board by framing up the issue. It is really simple. We have a pending application, that Paul has advised us is lacking basic information required to process. We have that list of missing information here in front of us and the applicant has that same list. There are 10 categories of missing information. Paul tells us that he thinks the applicant may be able to pull it together on 8 of the missing categories of information and of course we will give them an opportunity to do so. But it is the other 2 sets of information that we as a Board have to take a look at today. Never before have we looked at an application that is missing this information. The applicant has said that they have given us all they can give us. That's where discussion between the applicant and Paul have stalled and that's where Paul is at a standstill in declaring the application administratively complete, assuming of course that the applicant were to provide the information under points 3 – 10 in our list of missing information.

Clearly it is premature for us to declare the application administratively complete, even if we think the applicant has satisfied these first two issues because of the other 8 sets of things missing. So we can't declare it complete today. (3:49:00) But we might be able to do is to tell the applicant and our General Manager what the Board's position is on these first two issues. We have heard the applicants position, we have heard from the City of Fort Stockton it's position, we've heard from a number of other folks about this. Our attorney has advised us (3:49:21) that in the past and again on this agenda item that we have to be careful not to undertake something that would expand upon our or interpret our rules, policy or applicable law in a way that requires a rule making hearing. Our rule 6.1 speaks to that issue. Is there an interest in discussion among the Board or any interest in taking action on this?

Vanessa Cardwell: (3:49:56) Mr. President, I would like to move that we formerly recognize and give our support to our General Manager's position on the application on the issues 1 & 2 and set forth in writing and Paul's list of application deficiencies in Pau's January 15th letter.

Do I hear a second? Seconded by Merrell Daggett. I have a motion by Vanessa, and a second by Merrell. Is there any further discussion on this motion?

Vanessa: Glenn, I'd like to be clear about my motion. It is intended to be clear about the Board's position on issues 1 & 2. My motion is to be clear, and that our rules are clear as they are written on these two issues. Both our old rules and new rules, there is no need for more rule making. We looked at these issues and adopted rules that are clear about our position.

Glenn: Ok, any further discussion? Pause - - If not, all in favor of the motion say Aye Oppose Motion carries unanimously. (3:51:03)

Moving on to agenda item #8.....

Motion passed unanimously. 10 votes in favor, and 1 absent.

VIII Consider and/or act upon Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, ongoing Water Quality Analysis, District's development of Desired Future Conditions and Management Plan, USGS Independent Water Study and Brewster County GCD Interlocal Agreement

Manager Weatherby reported that:

- Well registrations are still an on going process
- Production Permits: Some are in the process, but not submitted as of yet
- Drilling Permits: Some in process
- Data Loggers: Being installing across the county for monitoring purposes
- Water Analysis: Samples randomly being taking across the county, there are not any red flags at this time
- District's development of Desired Future Conditions and Management Plan: An email dated February 11, 2010, that GMA7 has received notification from the Texas Water Development Board in reference to the Edwards/Trinity GAM (Groundwater Availability Model) runs that we should receive a response from them of our most recent GAM request around March 26th.
- USGS Independent Water Study: He attended the Brewster County GCD board meeting last week, and they did comply with our request to enter into the Interlocal Agreement. They are considering ways to cooperate with us through monitoring with us in the recharge areas that we have requested to monitor.

IX General Manager's report on incoming Groundwater District Correspondence

- Bids were solicited from our two local dealerships for a vehicle. The bid from Ford is the bid he would like to accept. The bid is for a Ford Expedition, regular length type vehicle, for \$25,451. The other bid from the Chevrolet house was for \$36,592.90.
- The uniform election dates were presented. Election date is May 8, 2010. The upcoming terms are May 2010 through May 2014. Terms expire for the following: Glenn Honaker – Precinct 1. Jack McIntyre – Precinct 1. Merrell Daggett – Precinct 2. Lynn Holland – Precinct 3. Ronnie Cooper – Precinct 4. Evans Turpin – City of Iraan. Unexpired term: Vanessa Cardwell – City of Fort Stockton. Term May 2010 to May 2012.
- Received correspondence from the I.R.S. that the 2010 mileage reimbursement rate has changed to .50¢ per mile as of January 1, 2010.
- A public funds training will take place in Abilene on January 22, 2010 and Manager Weatherby will attend.
- There is a Texas Water Law conference referencing the regionalization of water resources, the challenges of diversification, groundwater district planning, analysis of market values of water, putting together a water sales transaction, legislative and litigation updates, hydrologic topics for the Edwards aquifer, an update from the Edwards aquifer authority from San Antonio, and regulation of brackish groundwater. The cost is \$595 for one individual, if more than one of us go the cost is \$495 each. Paul said he is attending. The dates are March 22 & 23.

X Consider and/or act upon Agenda for next meeting

- Pecos County State Bank depository contract
- Order the General Election and a Special Election
- USGS Independent Water Study financial agreement
- City Resolutions that were presented today

XI Adjourn Merrell Daggett made a motion to adjourn, seconded by Alvaro Mandujano, Jr. The motion carried, and the meeting adjourned at 5:09 pm.

M. R. Gonzalez,
Secretary/Treasurer

Glenn Honaker
President

Date Approved