

Middle Pecos Groundwater Conservation District
Minutes of April 7, 2011

On this the 7th day of April, 2011, a Special Called Meeting 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
Janet Groth	Precinct 1
Merrell Daggett	Precinct 2
Lynn Holland	Precinct 3
Ronald Cooper	Precinct 4
Vanessa Cardwell	City of Fort Stockton
S. Evans Turpin	City of Iraan
Houston McKenzie	At Large

Member Absent: Alvaro Mandujano, Jr.

Quorum Present.

Others Present: Paul Weatherby/General Manager, Bill Dugat/MPGCD Legal Counsel, Kayla Carrillo, Melissa Mills, Bob Varmette/Fort Stockton Pioneer, Jeff Williams, Ed McCarthy, Bruce Scrafford & Brock Thompson/Fort Stockton Holdings Attorneys, Conrad Arriola, George Riggs, Joe Shuster, Drew Miller, Ori White, Doug May, Bill Lannom, Raul Rodriguez, L. B. Ryan, Melanie McKenzie, Winston Pfiester, Ruben Falcon, Ori White, Harvey and Sherry Gray, Gary Drgac, Refugio Rangel, Joe Shuster, Weldon Blackwelder, Warren Nutt and J. T. Waters/Video taping meeting for MPGCD.

- I. Call to order at 1:08 pm by Glenn Honaker, Board President and Presiding officer in the matter of the Continuation of contested hearing on Fort Stockton Holdings, L.P.'s amended production permit application and authorization to export. For the record this matter is being recorded and video taped.

Glenn Honaker: As presiding officer, I have received various motions for continuance and bifurcation of the hearing and responses for which I am seeking input from the Board of Directors. To specify what we have received, I turn to Bill Dugat.

Bill Dugat: Starting in the last week of March we began to receive various documents filed from parties seeking either a continuance of the hearing which means not to have the hearing until a later date or to have a different kind of schedule for the hearing. I received phone calls advising me from some of the parties that there would probably be a request for continuance. That started with a letter from Mr. McCarthy on behalf of Fort Stockton Holdings that it was in the works. Then on March 24th Pecos County, the City of Fort Stockton and Brewster County Groundwater Conservation District filed for a motion for continuance and asked that the hearing that was scheduled for today to be rescheduled for sometime in May. Mr. McCarthy had previously indicated that he was not available in May. This seems centered around some information that the applicant has given to the parties and that additional time was needed to evaluate that information. Along those lines, March 29th the General Manager requested information from the applicant.

On March 29th, Mr. Gregg McKenzie filed a motion and asked that the hearing be held in a different manner, a bifurcated manner where some issues would be heard first and some issues later. The parties will articulate this better than I am, I just want to give you a chronology.

March 29th on behalf of the General Manager, Mr. Gershon filed a letter concerning the scheduling, basically opposed to a hearing in June or July.

March 29th Fort Stockton Holdings filed a motion for continuance.

March 30th Fort Stockton Holdings filed a response to the request for a different bifurcated schedule.

March 31st Mr. Gershon filed a response.

Mr. Honaker sent out an order last Friday saying he had motions for continuance and requests for a different kind of schedule and I am going to stop the hearing that is to be conducted today and tomorrow and will continue that. We will keep the other continuance and schedule on the calendar, but I want to bring to the Board these motions for continuance rather than waiting until April 19th which is the next regularly scheduled Board meeting because we have these dates before us right now and Mr. Honaker wanted to get this before you. So he filed this order advising you and the parties that we would have this meeting today and advising them that they would have some argument available to them.

Then after that order came out we received another pleading from Fort Stockton Holdings on Friday as well as one yesterday. All the things that I have described except for the Fort Stockton Holdings pleadings on Friday and yesterday you have been provided by Mr. Honaker. I have copies for you of the pleadings from Friday and yesterday. (They were passed out to the Board). So that's where we are from the procedural standpoint and we are here today for the presiding officer to make a decision with your input as to how to proceed with the hearing. And that is why we did not have a hearing on the merits start at 8 o'clock this morning.

Glenn Honaker: Thank you Bill and thank the Board and everyone else for making yourselves available today. My plan is to take appearances of the parties and take argument. The Board will then go into executive session and seek legal advice from our special counsel Mr. Dugat. Then discuss the matter with the Board in open session and make a decision.

At this time I would like to take appearances from the parties in the proceedings starting with the applicant.

Ed McCarthy: Good afternoon Mr. Honaker and Board Members. Thank you. My name is Ed McCarthy and I am here along with Bruce Scrafford, attorneys for the applicant Fort Stockton Holdings, also with Jeff Williams and Brock Thompson for Fort Stockton Holdings.

Glenn Honaker: Thank you Mr. McCarthy. General Manager.

Paul Weatherby: Paul Weatherby, I'm here.

Glenn Honaker: Thank you Paul. City of Fort Stockton.

Ruben Falcon: Mayor Ruben Falcon, here.

Glenn Honaker: Thank you Mayor Falcon. Brewster County Groundwater Conservation District.

Conrad Arriola: Conrad Arriola.

Glenn Honaker: Thank you Conrad. Pecos County Water Control and Improvement District #1.

Harvey Gray: Harvey Gray, here.

Glenn Honaker: Thank you Harvey. Pecos County.

Ori White: Ori White, Pecos County.

Glenn Honaker: Thank you Ori. Tom Beard. Mr. Beard is not in attendance. Mark Bradley Davis. Mr. Davis is not in attendance. Gregg McKenzie.

Melanie McKenzie: Melanie McKenzie counsel for Gregg McKenzie, my father.

Glenn Honaker: Thank you Melanie. L. B. Ryan.

L. B. Ryan: Here.

Glenn Honaker: Thank you Mr. Ryan. In the order that I issued, I indicated that there would be 5 minutes of argument available to each party. The order of presentation of argument is in the order that we received the motions. First the County, the City, the Brewster County GCD collectively. When you are making your argument, please try to limit it to 5 minutes please.

Ori White: My name is Ori White I am here to present the motions for Pecos County and our counsel in Austin, it just makes since for me to stand in on their behalf. I've got to appreciate any one who limits a lawyers arguments to 5 minutes, it sounds like someone who has actually paid some attorneys fees during his life.

The first issue I will address is the procedural issue. Your rules appear to directly follow the governing statute of chapter 36 of the water code. These rules are simply pragmatic. They are intended to be utilized by common sense folks. Under your rules, and you probably know this much better than I do, that you have the authority to establish the order of presentation. Simply, you are in the driver's seat, and you can decide the way you want to run the show. Next week we have multiple lawyers and parties that have made their time available and it just makes since to have the hearing next week and get done what we can get done if you are willing to do that. On some time around March 16th we received information that the applicant had changed their application and was going to present some new expert data. We would certainly like to be able to analyze the data, have our experts analyze the data. At this point, we don't have anything but a seven page summary. So what we are asking is that, and if you want to use the word bifurcate, to bifurcate. It makes since, and we have joined in Mr. McKenzie's request and let's get started next week and deal with the issues that we can deal with next week. Then we'll see where we go from there.

One of the things that we would definitely like would be for there to be some deadlines and cutoff dates, so that we don't get to June and suddenly we have additional experts that we are going to have to depose. We would like to do what they do in a trial court nation wide, and that is to set some limits and also some limits on modifying their application again. We would

like for that target to stand still for a while so that we can analyze it for a while and it not change just a couple of weeks before the final hearing.

You are common sense folks, and it makes sense to – you are public servants here, and probably had no idea that you would end up spending so many days here. These rules give you authority to determine the presentation of evidence and you can recess – and judges do it all the time. Sometimes they will recess and if it is a complex case, it may be a multiple week recess and we think it makes common sense. We do not think there is any due process problem with you taking evidence next week, and hear what you want to hear and leaving the expert issues to a later date so that we can be prepared and we are hoping those dates are June, late June specifically, and that is what we are asking. Do you have any questions? All right, thank you very much.

Glenn Honaker: Thank you Ori. Second Gregg McKenzie, Melanie McKenzie

Melanie McKenzie: May it please the Board, my name is Melanie McKenzie and it is with great pleasure that I appear before you in my home town. I wish my Dad were here, he has a standing medical appointment over in Odessa and he will not be back until later this afternoon. He speaks better than I do. I do thank you for your time, I know you didn't know it would take so much of your time to do what you are doing on this very important matter with the water in Pecos County.

Basically my Dad is ready for this case to proceed and go to hearing. He did want to wait and he asked the Board to continue it until we get the USGS report which is probably going to be another year I understand until the USGS report is available. That is tax dollars that will give us more information about the aquifer. Fort Stockton Holdings (FSH) objected to that request and wanted to proceed and go to hearing on this matter. Now they have amended their pleading and their application to provide different information, from 40 some odd wells to 20, they just keep changing, and I can see this being continued because the hydrologists are going to reassess every time there are changes to the permit, they are going to have to look at it and think about whether it is compliant with the rules, it is a lot to absorb. So my Dad said why can't we just proceed on the non-expert issues. Can they meet the basic requirements of what an applicant has to meet to have a permit? I thought it made great logical sense, it provides for administrative economy, efficiency, all the issues can be decided that don't require hydrogeology or any other expert opinion. Where are the customers, do they meet the guidelines, basic information that can be presented in the two days that we have all ready allotted.

Today was going to be the start of the hearing, tomorrow was going to be a continuance, and next Thursday and Friday was going to be a continuance. Bifurcation just means separation and it happens all the time in trial court and they have a procedure to allow you to hear different parts of the case. It makes logical sense, it provides for administrative efficiency and economy. It seems like everybody is ready. The discovery cutoff is way past due. There was going to be some extensions and rule 11 agreements between the parties, but no one could agree on what the extension would be, so it is my understanding that we don't really have any agreed extensions in this case. I do believe that we are ready to proceed on the non-expert issues next Thursday. Do you have any questions? Again I want to thank you for serving on this board.

Glenn Honaker: Thank you. General Manager.

Paul Weatherby: Thank you chairman. I am Paul Weatherby, General Manager of the Middle Pecos Groundwater Conservation District. I'm getting over kind of a long illness, so please bear with me. I'll take it slow so that you can understand me. You know I do support Mr. McKenzie's motion on separating these issues – bifurcation the legal terminology. Limited issues to start with and, if necessary, go on later to the expert testimony, hydrological stuff, scientific evidence, whatever the case may be. The applicant's position from day one has been that it confidently met its burden on the limited issues on their original and amended applications. If the applicant can prove that is the case, then there should be no worries about proceeding in April on the limited issues on this application. If the applicant cannot prove that is the case now, almost two years, pretty close to two years, after they filed the original application – then we should press on and deny the application and stop wasting everyone's time and money. Or the applicant can even withdraw the application, I've made that suggestion before. It just keeps changing. After reviewing all the discovery to date received from the applicant, in my opinion the applicant has not met his burden on the limited issues. That is on the application itself, and you know what that means, it means that all the time and money the District and other parties are spending and waiting for the supplemental reports are just a waste if the applicant cannot meet the burden on the limited issues, the basic issues of this application. They set aside the technical issues related to the remaining issues to deal with limited issues as soon as possible on the basic application. We all know then that we can press on with our lawyers and consultants to focus on the hydrologic remaining issues in June or July, whenever.

Mr. McCarthy claims that some of the issues are interrelated with hydrological issues, in other words, some of the things I'm talking about is hydrological related and so we shouldn't separate this hearing into two parts. Well there is on the McKenzie motion issue F that's listed and could be interpreted as interrelated. I can drop that one off, that is no problem. The only reason we now need a delay, or may have a delay brought to us, is because Fort Stockton Holdings has made significant changes to it's application and continues to do so and now they are working on another geological report. The application has been a moving target from day one on a number of issues. The applicant has proven that it is not sure when, where, how or even if the proposed project, production, export is even going to get off the ground. I haven't seen one bit of evidence to show that.

These new issues raised by Fort Stockton Holdings will require all parties to spend more time and money on their ideas of trying to change things up and do something different at the last minute. They hadn't got anything done yet folks in a year and a half. Just a lot of money spent. It is prejudicing the other parties to deal with the applicants problems with the project. It is really burdening our District and constituents having to spend our resources dealing with their ideas and new ideas, then they change and we have to address that change, we get through that and they change it again. It's just an on going deal.

The applicant complains we have no authority to hold a hearing on limited issues. Well folks, we do have authority. You are going to hear from Mr. McCarthy that we flat do not have that authority. Well I in agreement with our lawyer, Mike Gershon, and his firm can stand here and tell you that we are not blowing smoke here and we do have the authority. We've talked about it before that the applicants initial filings didn't cite any authority other than his constitutional rights to be treated fairly and his position that the statute does not use the word bifurcate. Late yesterday afternoon the applicant cited two authorities and I'll address them in a second. Just to give you an idea, and this is in your packet, we have authorities that are on point Section 36.406(d)4 states that the presiding officer may establish the order for presentation of evidence. Gregg McKenzie's motion clearly falls in line with this statute. Also 36.406(d)7 states the presiding officer may insure that information and testimony are

introduced conveniently and expeditiously as possible without prejudicing the rights of any party. These statutes apply for all the reasons that I'm talking to you about today, that's all there is to it.

Fort Stockton Holdings right, we are not discriminating against, we are not being prejudiced against them in any way shape or form with this approach. They have the opportunity to make their case. They have and do have the the opportunity to cross examine parties on the limited issues. All those right will be given.

There's other references that we've put in your folder there and you may want to look at when you have time. It's referencing District rule 11.11.10 and Texas Water Code section 36.412. That is in your folder, I don't have time to go through the specifics of that, it something that Mr. Gershon sent to me in reference to this case.

And finally, folks without question since the legislature, the last legislature, this applicant – and I don't know if they were told to do this or if they do this all the time – I have no idea, but I know that on the Groundwater manager and other parties that this applicant has continued to be very aggressive. They continue to try to throw their weight around with this stuff. Say they are ready, and then say oh no let's do something else. Let's change this up and still want to go with the hearing. Throwing their weight around against the District. Mr. Scrafford there, we had a hearing one day and the next morning I get a Federal law suit filed against me and the District. (Mr. Weatherby received a time limit warning)

Alright, I have two things. Pushed us around in Federal Court, that was dismissed. Pushed us around with the TCEQ, no reason. Tried the legislature and didn't get any where there. Filed complaints with the Texas Water Development Board, no result there as of today. They haven't had their act together from the beginning. That is all it boils down to. I concur with the Mr. McKenzie's motion and let's separate the application into two parts, and hear limited issues and if need be progress on to the expert stuff. Again I strongly recommend and Mike Gershon agrees, that you all grant Gregg McKenzie's motion. Set the hearing this month in April on the limited issues. There is April 14 & 15, or April 28 & 29 are the suggested dates that we have. That I agree with Mr. McKenzie. Any questions? Thank you Chairman.

Glenn Honaker: Thank you Paul. Fort Stockton Holdings.

Ed McCarthy: Thank you Mr. Chairman, members, and other parties. My name is Ed McCarthy and I am here on behalf of Fort Stockton Holdings (FSH). The issue of continuance was first brought up by other parties desiring additional time to study information that FSH had provided them in connection with their application. We are willing to have that continuance. The initial suggestion was at least 30 days. We looked at the calendar and said that's fine except we can't start initially after 30 days, and we asked for the hearing to be held sometime near the end of May or in June which was just a little bit longer than the 30 days

The subsequent motion filed by Mr. McKenzie, or on behalf of Mr. McKenzie sought to bifurcate the hearing, and it had nothing to do with the change of order of presentation of evidence which is not so much as the order in which you hear the material as it is with the ability of the presiding officer to determine the presentation by the parties and how the hearing will proceed. These hearings, I've been to a lot of them, the hearings and presentations and permits before this District and I've never seen one where things are done in a piece-meal fashion or done in some kind of random order. But the real reason the issue of bifurcation comes up, it is not a separation in time, or of recesses, it is an actual bifurcation where you are being asked to hear some of the evidence and make a decision on it. If you

use Mr. Weatherby's words – If you don't make the decision and if need be we can go on, then you get the rest of the case. What's being asked of you is before you hear all of the evidence and have all of the information that's required by your own rules to make a complete and through decision on an application, you are being asked to stop everything and make a decision because you believe whatever part you have heard you can rule upon and not hear the rest of it. That would deprive an applicant the ability to have all evidence presented and have his entire case heard, then appeal the entire case in compliance with chapter 36 and in compliance with your rules.

So what we have asked for is to not have the hearing bifurcated. We have asked for the hearing to be held at the end of May or early June or go into July if necessary. We realize this is a delay, but it is the first time FSH has ever come to this Board and asked for a continuance or any additional time. A year ago we agreed that the city of Fort Stockton could have 6 months to go out and do its own study, a brand new study and have time to study those results, so we continued the hearing by agreement, we didn't fight it, we said fine we want you to understand the issues and we want you to understand the technical aspects of this. We agreed to it, and this Board granted it. Since then there have been several events that have caused this application to take as long as it has. Contrary to Mr. Weatherby's understanding it is not all our fault. We have modified our application over time. We have done so in response to filing information requested by the General Manager. We have done so in response to issues we have seen this Board grapple with and make decisions on, and we have done so in response to questions we have heard and received by the other parties. Nothing in this application has changed to enlarge the scope of the application, the potential impact of the application, or the amount of water we are applying for. In fact at every turn, every filing we have made we have shrunk the application. And competent hydrogeologist looking at the application and seeing that we are reducing the quantity, we are reducing the number of wells, we are shrinking where the well field is so the impact of the wells of any production will be shrinking. That will be clearly visible if any of the materials that we have filed was been reviewed and fully understood.

With respect to the changes in the hydrology report that we have had to file. That was done in response to after our application being filed, and this Board adopting new rules requiring additional information. We had to respond to your rules. We have also had to respond to your new management plan which we still do not fully understand because we have never heard your hydrologist explain what it is or how it works or given example. But we have been doing our best to try and respond to that. That occurred in October, you adopted in October, it was a couple of months later that the Texas Water Development Board finally approved it, and so it became formal. Then at that point in early January you proposed rules to implement, and until the rules were adopted expressing how it should be implemented, we had no idea how the management plan might work or how we would have to respond. On February 15th you adopted those new rules to implement the plan. Our hydrologists have been working in response to that.

Now on March 16th we filed information that as I said shrunk the application and its potential impact. The response we got from Mr. Weatherby was to be told that a lot of documents undefined unspecified documents that we previously filed were now obsolete, meaningless. We do not know what documents he is talking about, we do not know how or why they be obsolete or meaningless, because all that happened is we have fewer wells, we shrunk the potential impact. We are responding to that. And we will respond as soon as I can get back to Austin to file that information. By next week we intend to file, on Monday file responses to Mr. Weatherby's last letter requesting information, file the complete supplemental hydrology report, file the executed contract between Fort Stockton Holdings and the Midland County

Fresh Water Supply District. All of which is new information, it is not information that expands or requires additional analysis as to larger potential impacts to the project. It merely makes the project smaller in size and scope.

And so a lot of what Fort Stockton Holdings has been doing is responding to the District, or to its managements requirements or responding to other parties to address their concerns. At this point in time, responding to the request for continuance. To now say next Thursday and Friday come and put on evidence of non-hydrologic limited issues where many of those issues are tied to the hydrology is impractical. On top of that, the County has been let in as a party about six weeks ago which adds another wrinkle to this case and has designated a new witness. We don't know whether that witness is going to participate or not. They have requested an opportunity to depose the witness. The motion on that is not even going to be heard today. What has been described as the purpose of the witness' testimony is directly on one of the issues you are being asked to hear next Thursday or Friday. So without that witness, without a ruling on the deposition or the opportunity to conduct discovery on that witness, is really inappropriate to go forward on those issues next Thursday and Friday.

All we are asking for is a continuance for a short period of time so that we can provide additional information to the parties so they can better understand our application. With that I apologize for going over my time. I request you deny the request for bifurcation and the continuance schedule that has been proposed, and as you reset the matter at some point I time when parties are available in June or July of this year. Thank you.

And finally with respect to the additional information in terms of the hydrology report, the information response to Mr. Weatherbys request we are happy to commit and if you want to have you issue an order to that we will do this by the 15th of this month. Thank You.

Glenn Honaker: Thank you Mr. McCarthy. Are there any additional comments from any of the parties? Does the Board have any questions from any of the parties? Yes, Houston.

Houston McKenzie: If we split this into two parts, if one of these...

Glenn Honaker: To which parties are you speaking?

Houston McKenzie: Excuse me.

Glenn Honaker: To which parties are you speaking?

Houston McKenzie: OK, Mr. McCarthy. I may not understand it right, but it seems like we are being asked to make a decision whether or not to grant your request before we know all of the hydrology. I mean just, if there's plenty of water but we just don't want to let you have water no matter what – or we do want to let you have water no matter what comes out of this study. We are going to talk about non technical issues on this, are we going to split – this is for Melanie, excuse me. Are we going to split the question your application that we had talked about non...the fact is...I don't see how we can make a decision on that unless we know whether the water is available or those types of questions.

Melanie McKenzie: Basically there is no order and the procedure provide that you can decide how best to present the evidence. And what our motion is requesting is that since things have changed they have amended their application they have gone from 40 to 20, they are still asking for the same amount of water, it really isn't shrinking, they are still asking for the same amount of water. Can we go and see if they have met the other essential elements

of their application that don't require the experts next week. For example the customers, the beneficial use that is going to be used for the water, where the wells are, the spacing requirements, all the basic requirements that do not require the Thornhill Group or all the other experts to come in and tell you, stuff that you can decide on without evidence from the experts to say you should do this or you should do that, of course you are always free to disregard experts, but that is going to be on the hydrology side of the case. This is basically have they met the other essential elements of their application. And it may not take that long to decide that, and if this Board finds that they have, then we will go ahead and schedule the hearing for the next portion the hydrology portion of the case. So basically it's just go ahead and get this rolling because it has been going on and on. There have been continuances, if my client had his way, he would have you wait until the USGS study report is in so we would have more information on the aquifer. We don't have that, so all my client is asking is to proceed now on the issues that do not require expert reports.

Houston McKenzie: Can we ask for information like, as a Board member, information from some of the parties? Do we have the right to do that? I guess they can turn us down, but I what I would like to ask is from Fort Stockton Holdings and Williams Ranch if he could go back and figure out the average amount of water you have used during the Historic Use period. That's what I would like to know.

Bill Dugat: The way that we would deal with that is in an evidentiary hearing, the applicant would have the opportunity to present hydrological data, and if they didn't answer that kind of question during their presentation, you could ask the question and see if they might be able to answer it.

Houston McKenzie: OK. I would like to know the answer to that question. So you guys can have time to answer that question and get it together.

Ori White: May I? Houston I wanted to say something else beneficial about dividing this hearing up. If you had the initial hearing on the non-expert testimony and you decided *Hey Look, we are going to deny the application* then you end up saving both sides tons of money in the sense that we wouldn't have to hire a bunch of experts for the June hearing. And for us it is all tax payer money. That is another benefit to see what we can get done this month and then see where we go from there.

Glenn Honaker: Thank you Ori. Mr. McCarthy.

Ed McCarthy: Mr. McKenzie the specific answer to the question you asked is in paragraph number 4 of Mr. McKenzie's motion. He says that he request the presiding officer order that the limited issues be heard separately from the remaining issues in order to allow the District's Board to proceed with deliberation and action on the application if it is their position that the applicant cannot meet its burden on the limited issues.

They are asking you to make a decision to deny the application early, but not a position to grant the application on less than all the evidence that is presented. By asking you to make a decision on less than all the evidence, you put yourself in a position of reversible error that during the course of the remainder of the hearing, including the hearing on the hydrological issues, information will come to light which is responsive to all the issues that you are by statute and by your own rules to consider in deciding whether to grant or deny a permit. So what is being requested of you violates your rules and violates the statutes, violates our due process rights. So that is why we are asking you not to do that.

With respect to saving money and taxpayer dollars, the statute doesn't contemplate that kind of process, this is a hearing on the entire application and the applicant is entitled to present his entire application and at that point you will rule on it. That is what we are asking you to do. Thank you.

Glenn Honaker: Thank you Mr. McCarthy.

Melanie McKenzie: Can I say one more thing since he said our motion said something?

Glenn Honaker: OK, make it quick.

Melanie McKenzie: OK, I will make it quick. Paragraph 4 does not say to deny the application. It says let's just proceed on the non-expert issues. Then you get to decide. No one gets to decide anything but this Board. Thank you.

Paul Weatherby: There you go again Board. Mr. McCarthy standing up here saying you can't do this. You cannot separate this. We have got to hear all the evidence. It will be reversible error. You are going to lose out on whatever decision you make, they'll appeal it. They will sue us whatever the case may be. He laid it straight out to you, correct? I just got through telling you that our attorney, our law firm, says it is not that way. We can do this. We can separate the permit hearing in order to have amounts of water permitted at whatever amount, you have got to have an application that is good before you get to that point. There is two separate deals here. There's your – we struggled with the administratively incomplete issue for months and months. They finally put a bunch of stuff in the blanks and they called it administratively complete. Now we are ready to go to hearing on the limited issues on this case, bifurcate the hearing. Again, I just want to close saying Y'all put a little confidence in our attorney firm. Don't take the aggressiveness and right out bluntness of them saying y'all are going to do reversible error. Well, we can see about that folks. We'll see about that. OK.

Ed McCarthy: Mr. Honaker, if I could briefly respond to that.

Glenn Honaker: very brief, and then this is it ladies and gentlemen.

John Dorris: Hurry.

Ed McCarthy: Yes Mr. Dorris, I will hurry up. Board members with all due respect to Mr. Weatherby, your law firm in this matter today is not the law firm of Lloyd Gosselink, nor Mike Gershon your general counsel. Your lawyer is Mr. Bill Dugat with Bickerstaff law firm. I hope that in executive session you will listen to his counsel whatever that may be. But I do want to make it clear that Lloyd Gosselink is not your lawyer in these proceedings Thank you.

Glenn Honaker: Thank you Mr. McCarthy. At this time we will now go into executive session. Pursuant to section 551.071 Texas Government Code- to seek legal advice from Special Counsel. Any final action, decision, or votes will be conducted in open session. The time is now 1:51 p.m.

Glenn Honaker: Reconvene in open session @ 2:35 p.m. President Honaker announced that no final decision, action or vote took place in executive session.

Agenda items III through VI were opened, and dealt with all at one time.

II. Comments from Public and Media (Limit to 5 minutes) Item overlooked

- III. Consider and/or act upon Joint Motion of County, City of Fort Stockton, and Brewster County Groundwater Conservation District for Continuance of Current Hearing Dates and Requesting the Rescheduling of Hearing Dates and the Establishment of Related Deadlines
- IV. Consider and/or act upon Greg McKenzie's Motion Regarding Continuance and Proposed Alternative Schedule
- V. Consider and/or act upon Fort Stockton Holdings, L.P.'s Motion for Continuance and Reply to County's et al Joint Motion for Continuance of the Current Hearing Dates and Requesting the Rescheduling of Hearing Dates and the Establishment of Related Deadlines
- VI. Consider and/or act upon Recommendation by Board President as Presiding Officer on the procedural schedule and hearing dates

As presiding officer, I do believe that a continuance is warranted to further expedite the hearing process. We are having concerns about the bifurcation proposal including (Bill Dugat: That's bifurcation for everyone.) To separate it, some words I just can't say.

One presumption created by the bifurcated process is that the Board will deny the application.

Two, the authority of the Board to act upon an application based upon some evidence before the applicant put forth all its evidence and rests its case.

Three, making a decision based upon less than all the factors listed under District rules, and Water Code which the Board must consider.

Four, establishing a manner of hearing a year into the process.

Five, difficulty of separating the limited issues from the hydrogeological issues.

I am going to grant a continuance, but not a bifurcated schedule. I want the hearing to be commencing either in the last week of April and into the month of May. The parties have until April 13th to coordinate schedules with Bill Dugat. We are going for four days, including the week in May. In April and the month of May, any day except Monday, two consecutive days for two weeks. If the parties do not coordinate with Bill and get a schedule established, I will establish a schedule.

Also, Order FSH to supplement by April 15th as Mr. McCarthy referenced in the earlier proceedings.

We will follow with a written order after coordination of dates, after April 13th.

Bill Dugat: We encourage you to get them in before the 13th.

Glenn Honaker: No later than. Does anyone have any questions?

Bill Dugat: So it's four days of hearings. Two days one week, and two days another week. As long as the two days are consecutive and not on a Monday.

Glenn Honaker: We will be establishing deadlines for discovery and what else?

Bill Dugat: There are some outstanding motions that weren't on the agenda, we will rule on those as well as he is going to put some deadlines and afterwards there will be no further supplementation.

Glenn Honaker: That is the end of it. Questions?

Ed McCarthy: Mr. Honaker, Mr. Dugat, Thank you very much. We still have some outstanding depositions that we have not been able to take because of continuous comments on the table we discussed postponing taking those depositions, and am I correct in my assumption that we will be to continue to take those depositions between now and the hearing date?

Bill Dugat: What the presiding officer is going to do is set some deadlines, after which there will no further discovery permitted. Right now discovery is still open. We have not ruled on a motion to compel, so the fact that discovery is still open doesn't mean that the motion has been granted. And there is another discovery matter about a third party deposition that has to be ruled on. So there are some.....there will be a discovery deadline set. Discovery can continue at this point.

Ed McCarthy: The reason I ask is we have started Mr. Randy Williams deposition but he has not finished his analysis, so we continued so he could finish his analysis. We haven't had a chance to get Mr. Weatherby's deposition, or Pecos County's experts deposition.

Bill Dugat: What I suggest as presiding officer that he adds to the schedule by agreement is the deadlines for discovery and any deadlines the parties wish implemented, should be attempted to be agreed to by April 13th and if they are not, he will set them. Based on those suggestions.

Ed McCarthy: I appreciate the clarification, thank you.

Glenn Honaker: Thank you sir. Anything further? Board? Thank you for your attendance today.

Bill Dugat: Just to make it clear, the presiding officer has the authority to do what he has done without the Board acting on it. It is important for the Board to hear this and to give advice on these issues, that is the nature of this continuance hearing.

Glenn Honaker: I appreciate everyone coming today and participating in the process, and at this time I will accept a motion to adjourn.

VII. Adjourn

Merrell Daggett made a motion to adjourn, seconded by Vanessa Cardwell. The motion carried, and the meeting adjourned at 2:43 PM.

M. R. Gonzalez
Secretary/Treasurer

Glenn Honaker
President

Date Approved _____