

**Middle Pecos Groundwater Conservation District**  
Minutes of September 8, 2011

On this the 8<sup>th</sup> day of September, 2011, a Public Hearing on the Proposed Tax Rate and Production Permits was held by the Middle Pecos Groundwater Conservation District 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
Janet Groth	Precinct 1
Merrell Daggett	Precinct 2
Evans Turpin	Precinct 3
Ronald Cooper	Precinct 4

Member Absent: Vanessa Cardwell, M. R. Gonzalez, Weldon Blackwelder, Houston McKenzie, and Alvaro Mandujano, Jr.

Quorum Present.

Others Present: Paul Weatherby/General Manager, Kayla Carrillo, Melissa Mills, Refugio "Cuco" Rangel, Shirley Smetak, L. B. Ryan, Gary Bryant, Bob Varmette, Brock Thompson, Ed McCarthy, Jr., Jeff Williams, and Harvey Gray.

- I Call to Order. The hearing was called to order by President Glenn Honaker at 10:11 AM.
- II Second of two public hearings to receive public input on Proposed Tax Rate of .025 cents per \$100 valuation for 2011/2012. No formal action will be taken to adopt the rate at today's hearing.  
  
Public Comment: Ed McCarthy Jr. stated that the .025 cents was an incorrect statement. The correction is \$.025 or remove the word "cents". No further comments were made.
- III Adjourn. Evans Turpin made a motion to adjourn, seconded by John Dorris. The motion carried, and the meeting adjourned at 10:32 AM.

**Public Hearing on Production Permits *Call to Order* at 10:32 AM**

The Board convened into executive session at 10:32 AM. pursuant to Open Meetings Act § 551.071. *Consultation with Attorney.*

Reconvened at 11:12 AM.

President Honaker explained that in executive session a phone call was made to MPGCD Attorney, Mike Gershon. No action was taken in executive session.

The permit hearing of the Middle Pecos Groundwater Conservation District was called to order on September 8, 2011, at 10:32 A.M. Before us today are the applications for production permits submitted by Pecos County Water Control and Improvement District No. 1 and Fort Stockton Independent School District.

Glenn Honaker, President of the District's Board of Directors and the Presiding Officer of these hearings, along with a quorum of the Board of Directors who will also officiate and participate in ruling on the applications today. This hearing will be governed by applicable statutory law, including the District's enabling act, Chapter 36 of the Water Code, Chapter 551 of the Texas Government Code, the District's Rules, and all other applicable Texas law.

Pecos County WCID#1 and Fort Stockton ISD obtained and are currently operating under an interim permit issued by the Board under Section 36.1071 of the Texas Water Code. The interim permits were issued because we were working to update and get our Management Plan approved by the Texas Water Development Board and then adopt rules to implement the Management Plan. We adopted District Rule 11.7 to address the process that we as a Board will follow in processing the applications of these interim permit holders. District Rule 11.7 requires that we hold a hearing and take action on each application for which an interim permit was issued under the District's rules for permitting, Rules 11.10 and 11.11.

At the hearing on June 21 we made it clear that the applications before us for Pecos County WCID#1 and Fort Stockton ISD were for production permits based on Rule 11.7. FSH's attorney Ed McCarhty has some questions about whether these applications are for an interim permit or a production permit. Again, we addressed this same issue at the hearing on June 21 based on Mr. McCarthy's questions and explained to Mr. McCarthy that all of the applications before us, including Pecos County WCID#1 and Fort Stockton ISD, were for production permits and that the applicants were currently operating under interim permits.

We opened the hearing on June 21, 2011 on these applications to determine party status. Fort Stockton Holdings requested and was granted party status on these two applications at the hearing on June 21. FSH was the only entity that requested and was granted party status on the Pecos County WCID#1 and Fort Stockton ISD applications. At the June hearing we also instructed FSH and the applicants to coordinate and to provide to us their proposed schedule for conducting the hearing on these two applications. The District never received any correspondence or proposed schedule from FSH. At our Board meeting in August, the General Manager provided the Board with an update on where things stand with these applications and indicated that he would go ahead and set these applications for a hearing since FSH had not provided the District with a proposed schedule. The District received requests for party status on these applications before us today from FSH again yesterday, on September 7<sup>th</sup>. There is no need to make a decision on FSH's party status because they were already granted party status for these two applications three months ago at our June hearing. Before we move to conduct the hearing, let's determine whether there are any other interested parties that want to either make public comment or seek party status on either of these two applications.

For members of the public, if you want to provide either public comment or become a party to a hearing on this application you have to fill out a registration form that is located on the table near the entrance to the courtroom. The difference between only providing public comment and becoming a party to the hearing is if you fill out a hearing registration form and only check the box that you want to provide public comment that means that you only have the

chance to provide public comment before the hearing begins today and that you will not be considered a party to the hearing on the application. It also means that the Board will not be able to consider your comments in its deliberation on the application. If you fill out a hearing registration form and check the box that you want to be a party to the hearing then that means that you will have to demonstrate whether you have a justiciable interest in the application, this will be discussed as to what that means shortly. Being a party to a hearing on an application means that you can put on evidence and cross examine the applicant's witnesses and that the Board can consider your evidence when making a decision on the application. Anyone from the public that has not yet had the chance to fill out one of these forms that intends to fill out a form to either provide public comment or become a party to the hearing should do so now. Note: no registration forms were turned in to provide public comment only.

Those that are interested in becoming a party to a contested hearing on an application are required to follow District Rule 11.11.4(a) and must be present and be prepared to articulate why he or she should be a party to the hearing. The District has already granted FSH party status and we have not received any other notices of protest or any other forms indicating that another person wants to protest any of these applications. This is one last chance for members of the public to become a party to the hearing on the application. Note: no request were received requesting party status.

We considered both of these applications previously and made a decision prior to today, but as interim permits because § 36.1071 of the Texas Water Code only let us issue interim permits on these applications while we developed our Management Plan and rules. Under Rule 11.7, both Pecos County WCID#1 and Fort Stockton ISD were authorized to produce whatever they needed on an interim basis. Today, we are going to make a decision on these applications as we do with all other non-interim permit applications under Rule 11.11.10.

Mr. McCarthy, legal counsel for Fort Stockton Holdings LP, (FSH) was given the floor to present information to the Board on the Pecos County WCID#1 application.

- ◆ FSH asks for clarification as to which application is being brought before the Board at today's hearing due to the fact that the notice for June 21, 2011 is worded different than the notice for September 8, 2011.
- ◆ On September 7, 2011, FSH filed a request for a contested case hearing and a motion to consolidate or in the alternative a motion for continuance. FSH urged the Board to Continue the hearing until a time when he felt the hearing is properly noticed and a proper application is filed with the District and at that time FSH requests the opportunity to review the evidence that the Board will be considering.
- ◆ On July 11, 2011, FSH requested information regarding the applications they were granted party status on in the June hearing. He reported that the only information that he had received from the District was substantially deficient with respect to the Districts rules #11.10 and #11.11.

Glenn Honaker reported that the Board had reviewed with legal counsel the FSH request for continuance. The request for continuance is denied and the hearing will proceed.

Again Ed McCarthy, Jr., reiterated that he did not know which application is being heard today. He did not know if it was the June 21<sup>st</sup> notice posted for 631 acre feet or the September notice posted for 246 acre feet.

The Board felt that the notice posted on June 21, 2011 sufficiently explained that the requested amount is 246 acre feet for public supply plus 385 acre feet previously approved for a total of 631 acre feet. The application had been admitted into the record in the interim permitting process.

Manager Paul Weatherby was asked to brief the Board on the Pecos County Water Control and Improvement District#1 application. He stated that the merits of the application were heard previously, and that the documentation to support the requested 246 acre feet increase is filed. The number of acre feet requested on the two notices are the same, an additional 246 acre feet. Mr. Weatherby recommended the application be approved.

Merrell Daggett made a motion that the application be accepted and approved. He promptly withdrew his motion as statements had not been heard from all parties in today's hearings.

Pecos County Water Control and Improvement District #1 (PCWCID#1) representative is Refugio "Cuco" Rangel. Mr. Rangel stated that they are only requesting an increase of 246 acre feet for the well system. The total acre feet will be 631 acre feet when you combine the 385 historic and existing use acre feet with the current request of 246 additional acre feet. The water is being requested due to additional residential customers and future growth.

Manager Paul Weatherby stated that neighboring wells are being monitored and there are no issues with drawdown and recovery of water levels. Wells that are 2 to 2.5 miles south of there have been monitored as well as wells on adjacent property.

Fort Stockton Holdings cross examination of Mr. Rangel and Mr. Weatherby:

McCarthy to Rangel: Mr. Rangel, you say that 246 acre feet is needed for 49 new taps?

Rangel: No, not right now. Our water system is growing and we will get there.

McCarthy: You will get to 49 new taps or you have 49 new taps?

Rangel: We have 49 new taps.

McCarthy: How many total taps do you have?

Rangel: We have right at 1,000.

McCarthy: How many acre feet are you currently authorized to pump?

Rangel: 631 take away 248....385.

Glenn Honaker: 385 acre feet is what the notice says.

McCarthy: I understand that is what the notice says. I just want to make sure I understood how much water he had and what his service is. Mr. Rangel the applications I received were signed by you – correct?

Rangel: Yes.

McCarthy: OK. Do you own the wells>

Rangel: Pecos County Water Control and Improvement District #1 owns the wells.

McCarthy: So according to the Districts rules that require that if the applicant is not the owner of the well, there would be required evidence of your authority to sign the application and file it with the District. Did you provide as part of the application a Board resolution or other authorization authorizing you to sign the registrations?

Rangel: No, I did not.

McCarthy: OK. On each of your applications did you fill out the location of the wells?

Rangel: Yes, when we got the first permit we did, and it gives the location of all of our wells.

McCarthy: But, in the application that is being considered today – did you indicate the location of each well?

Rangel: No, not on this last one.

McCarthy: What was the date of the application? (No answer) Do you know what calendar year?

Rangel: The first I'm sure was in 2010; and this additional, the 246, it was done this year.

Glenn Honaker: The date on the application is October 28, 2009.

McCarthy: OK. The only applications I received from Mr. Weatherby are all dated in 2007. I didn't receive any 2009 – 2010 or 2011 applications. Again that is part of why the confusion. My unpreparedness, despite my effort to get information from the District over a month and a half ago. We didn't get the information we requested. So, I am asking a lot of questions, in part, because I don't have the benefit of what is before you and I apologize – but I need to explore these things. Is it possible for me to take a look at the application that the District is currently considering? Because it is not in the information you have provided to me last month. Is it in evidence? I mean if it is in evidence....

Glenn Honaker: Yes, it is in evidence.

(McCarthy was handed a copy to review.)

McCarthy: You prepared this application Mr. Rangel?

Rangel: Yes.

McCarthy: And you signed it?

Rangel: Yes.

McCarthy: Do you know when the 246 acre feet was completed on this application or by whom?

Rangel: The application was in October of this year.

Glenn Honaker: I don't know about these questions.

McCarthy: I am trying to determine – I am trying to get information about the application Mr. Honaker. Unfortunately, it is the first time I have seen the application and I apologize for that.

Glenn Honaker: What was your question?

McCarthy: I was asking when and by whom the 246 was completed in the application. Who wrote this in?

Rangel: When the application was first started ....that was the total amount that we wanted – the 246 acre feet has not been changed, it is the same. It was just worded different.

McCarthy: Because the applications I got from 2007 didn't have any amounts plugged into them, that is what I am trying to explore. May I see that again please?

Mr. Rangel the application that I have that was provided by the General Manager is a two page document. Is that correct?

Rangel: Yes.

Glenn Honaker: He doesn't have this stuff in front of him.

McCarthy: I'd be happy to show it to him – I mean, the set up that the Board is using for his hearing is not conducive to a hearing. I apologize for that. And had I had this ahead of time, I'd be happy to have copies to talk to him about it. What I am trying to explore Mr. Rangel, is this the entire application?

Rangel: Yes. Do you mean were there (inaudible word).

McCarthy: The District has rules with respect to permit applications and require certain elements to be included in a permit application. I am trying to determine whether or not the District has in front of it a complete application.

Glenn Honaker: It is all right here.

McCarthy: Can I have a few minutes to look at it?

Glenn Honaker: No.

Paul Weatherby: You have been handed a lot of this stuff. You are just going over stuff.

Glenn Honaker: Time out.

McCarthy: Mr. Weatherby, I'll be happy to share with the Board exactly what you sent me, which is not including any of the information your are talking about this morning. There was no information including maps and things like that. I got a bunch of 2007 dated applications which were totally incomplete, noncompliant with the Districts rules. Had I been provided....

Paul Weatherby: Your opinion

McCarthy: Well, I can go through each of your rules that aren't addressed in the applications. I am happy to show the Board the incomplete blanks. I don't have the maps that are required.

Glenn Honaker: We have reviewed it and are aware and are confident. You think they are not right – we think they are. We can sit here and butt heads for the next 3 weeks.

McCarthy: I don't want to do that. That is why in July I requested all this information and didn't get it. I don't have this. If I had this I wouldn't be up here. If I had the maps, I wouldn't be up here. I've gone through the 2007 applications for the well numbers that are identified.

John Dorris: Paul, did you send him the information?

Paul Weatherby: Yes.

John Dorris: That is good enough. Let's go, it's our word against yours.

McCarthy: This is the well applications that were sent to me. That's yours and this is attached to it, I don't want to mix them up.

Paul Weatherby: Do you have a problem with this?

McCarthy: I would just like to see the complete application.

Paul Weatherby: Have you seen this?

McCarthy: I have seen that.

Glenn Honaker: This is the (inaudible word), the 246 acre feet.

Ronnie Cooper: I thought you just said you haven't seen this before and you just said you have seen this.

McCarthy: I have seen it this morning – just now in the last 5 minutes.

John Dorris: It was sent to you, I don't know why you....

McCarthy: No sir, it wasn't sent to me.

John Dorris: How do we know we didn't? We say we did. We can't help it if your secretary is incompetent.

McCarthy: I'll apologize to my secretary for your disrespectfulness.

What that application doesn't include that is required by the District rules is evidence of authority to file application, the map locations, statement of the estimated rate of withdrawal, the date the permit will expire, the location of the use of the water, information confirming that all the statutory regulatory required approvals of other agencies – something Mr. Weatherby's brought to my attention before, such as TCEQ for a municipal license supply well hasn't been supplied to the District. A map showing location of all existing wells within a one half mile radius of the well. Map or other documents from the Pecos County Tax Appraisal District indicating ownership and locations of subject property. A document indicating location of the proposed well or existing well will be modified. Subject property adjacent property owner, the owner's physical and mailing address, notice of any application of Texas Commission on Environmental Quality to obtain or modify a CCN or provide water or wastewater. The amount of water to be used for each purpose. Those are requirements from your rules in rule 11.10. I haven't seen it, that is what I am asking about.

Glenn Honaker: Do we have that?

Paul Weatherby: Some of them are not applicable to this application, but the stuff is right here, the drought contingency plan, the maps, the authorization for him to sign back in the "Historic and Existing Use" days to act as General Manager, the well registrations on each well, the "Historic and Existing Use" documentation all the way back to '05.

McCarthy: I have the "Historic and Existing Use" applications. They provide a basis for going forward, this is an application for an amendment to the well permit process and it's the information that the rules require for an amendment to the well process, the application. I would request that the Board would have copied and included in the record the entire application of the applicant so it can be reviewed in the future.

Janet Groth: I would like to go into executive session to consult with the attorney.

Glenn Honaker: Pursuant to section § 551.071 Open Meetings Act for *Consultation with Attorney* regarding status of permit. Any action on this matter will be taken in open session. The Board now convenes in closed session at 11:46 AM.

Public hearing reconvened into open session at 12:27 PM. No action was taken in executive session.

Glenn Honaker: In light of the situation today and the fact that both the PCWCID#1 and FSISD are operating under interim permits and it will not be detrimental or harmful to continue this hearing – we will continue this hearing and take it up on our – scheduled for 60 days – at our regular Board meeting in October.

McCarthy: Mr. Honaker if you want to schedule the hearing for the October 18<sup>th</sup> Board meeting, even though it is less than 60 days, as long as you respond quickly, I have no problem with the October Board Meeting.

Glenn Honaker: The October Board meeting OK with the Board? (All YES responses). This hearing will be continued on the October Board meeting for both permit applicants. Both can continue under their interim permits until that time. So there is nothing detrimental to the applicant. This will clear any misunderstandings up with the protestants.

Janet Groth: Do you need a motion to that affect?

Glenn Honaker: I'll entertain a motion to that affect, although I think I can just do it.

Janet Groth made a motion that we continue the hearings for both Pecos County Water Control and Improvement District #1 and Fort Stockton Independent School District until the October regular meeting. Seconded by Merrell Daggett. The motion failed with 5 FOR and 1 Oppose.

Glenn Honaker: As presiding officer, I continue this permit hearing until our normal October Board meeting for both applicants Pecos County Water Control and Improvement District #1 and Fort Stockton Independent School District.

- I Open for Public Comment (Limit 5 minutes per person): None
- II Consider and/or act upon **Pecos County WCID#1 interim production permit**  
Tabled
- III Consider and/or act upon **Fort Stockton Independent School District Interim production permit application**  
Tabled
- IV Adjourn. Evans Turpin made a motion to adjourn, seconded by Janet Groth. The motion carried, and the meeting adjourned at 12:32 PM.

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M. R. Gonzalez, Secretary/Treasurer

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Glenn Honaker, President

Date Approved \_\_\_\_\_