

Middle Pecos Groundwater Conservation District
Minutes of October 18, 2011

On this the 18th day of October, 2011, a Public Hearing on Production Permits and a Regular Board Meeting 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:

John Dorris	Vice President, Precinct 3
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
Janet Groth	Precinct 1
Merrell Daggett	Precinct 2
Weldon Blackwelder	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4
Ronald Cooper	Precinct 4
S. Evans Turpin	City of Iraan
Houston McKenzie	At Large

Member Absent: Glenn Honaker and Vanessa Cardwell.

Quorum Present.

Others Present: Paul Weatherby/General Manager, Mike Gershon, Melissa Mills, Melanie McKenzie, Bob Varmette, Brock Thompson, Ed McCarthy, Jr., Jeff Williams, Refugio "Cuco" Rangel, Shirley Smetak, Harvey Gray, Daniel Pearson, Bob Joseph, John Bumgarner and Ralph Traynham.

Continuation of Public Hearing on Interim Production Permits
Call to Order 10:08 AM

Note: The meeting verbatim is attached as Attachment A.

The Board convened into executive session at 10:14 AM. pursuant to Open Meetings Act § 551.071. *Consultation with Attorney.*

Presiding Officer John Dorris explained that no action was taken in executive session.

Reconvened at 11:19 AM. Lunch break from 11:20 AM to 12:30 PM.

I Open for Public Comment (Limit 5 minutes per person) None

II Consider and/or act upon **Pecos County WCID#1 interim production permit**
Merrell Daggett made a motion to approve the production permit for Pecos County WCID#1. Seconded by Evans Turpin. Motion carries unanimously. (Note: The permit is approved for 246 acre feet from the Edwards/Trinity aquifer for Public Supply/Municipal; for the well system of wells 2,3,4,5,6,7.1 and 7.2). A special condition was placed on the permit: the permit is granted for 10 years.

- III Consider and/or act upon **Fort Stockton Independent School District Interim production permit application**
Motion by Merrell Daggett and seconded by Janet Groth to continue the hearing on November 15, 2011 at 1 PM. Motion carried unanimously.

- IV Adjourn: Hearing to be continued at the regularly called meeting on November 15, 2011.
(Note: The hearing for today ended at 2:12 PM)

Regular Board Meeting

- I Call to Order. The Regular Meeting was called to order by Vice President John Dorris at 2:13 PM.
- II Comments from **Public and Media (limit 5 minutes per person)**
No public comment.
- III Consider and/or act upon **minutes of September 20, 2011**
Ronald Cooper made a motion to approve the September 20, 2011 minutes as presented. Seconded by Merrell Daggett. Motion carried.
- IV Consider and/or act upon **Accounts Payable and Treasurer's Report for 09-30-2011**
Ronald Cooper made a motion to approve the accounts payable, treasurer's report and the line item transfers for 09-30-2011. Seconded by Merrell Daggett. Motion carried.
- V Consider and/or act upon **USGS Study**
Representatives from USGS were in attendance to present a comprehensive up to date reflection via power point presentation of what has been done, and what still needs to be completed. They answered question from those present.

Merrell Daggett made a motion to accept the USGS study as presented, seconded by Janet Groth. Motion carried.
- VI Consider and/or act upon **General Manager's Quarterly Report** Tabled
- VII Consider and/or act upon **Senate Bill 18** Tabled

- VIII Consider and/or act upon **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, ongoing Water Quality Analysis, Monthly Drought Report/Palmer Drought Severity Index maps, Updates from Legislative Consultant; Pecos River Water Quality Coalition Summit**
- Well Registrations: Continuing.
 - Production Permits: There are a couple of production permits that are in the process of submission.
 - Drilling Permits: None.
 - Data Loggers: No new ones; working with USGS & TWDB to use wells along the Pecos River to monitor when funds allow.
 - Water Quality Analysis: On going.
 - Palmer Drought map: The map is in the Directors book for review.
 - Legislature: Update from Bob Turner in Directors book for review
 - Pecos River Coalition Summit: Held in Austin, Weatherby will not be attending
- IX General Manager's report on incoming **Groundwater District-related Correspondence**
- The next Texas Alliance of Groundwater Districts (TAGD) will meet Nov. 29 & 30, 2011
 - Far West Judges Conference sent a "Thank You" note to Mr. Weatherby for attending and speaking at the conference
 - The Governor has asked Mr. Weatherby to serve on a subcommittee and represent Texas Groundwater Districts.
- X Consider and/or act upon **Agenda for next meeting**
- Senate Bill 18/Eminent Domain Compliance
 - Interim Production Permit: Fort Stockton ISD
 - General Managers' Quarterly report
 - Rules update due to legislature
- XI **Adjourn** Merrell Daggett made a motion to adjourn, seconded by Weldon Blackwelder. The motion carried, and the meeting adjourned at 3:15 PM.

M. R. Gonzalez, Secretary/Treasurer

John Dorris, Vice President

Date Approved _____

Attachment A - Minutes Verbatim

Vice President John Dorris presiding officer:

This permit hearing of the Middle Pecos Groundwater Conservation District is called to order at 10:08 A.M.. I am John Dorris, Vice President of the District's Board of Directors. I am the Presiding Officer of this hearing and I will be officiating over today's hearing, along with a quorum of the Board of Directors who will also officiate and participate in ruling on the applications before us today. Our official record will be an audio recording, and I'll confirm now that our recorder is "on," and sitting here at the Board table. Paul, Melissa: Are we good? (Paul Weatherby answered yes the recorder is on.) For the record, it's Tuesday, October 18, 2011, and 10:08 A.M.

Today's hearing is a continuation of a permit hearing last held on September 8, 2011, which was continued for reasons that I'll explain in a minute. We'll consider two applications for production permits today, one filed by Pecos County Water Control and Improvement District No. 1, and the other by the Fort Stockton Independent School District. Both applicants have been properly operating their wells under interim permits in accordance with District Rule 11.7, and are now requesting that the Board take formal action to approve their applications and grant regular – that is, NON-interim" – production permits.

Glenn Honaker, our Board President, presided over the September 8th hearing and announced today's hearing time and location at the September 8th hearing. So, Glenn's announcement meets our permit hearing notice requirements. This hearing is also included on our Board agenda, which our General Manager posted under the Texas Open Meetings Act, so we've met all our legal notice requirements.

All of my preliminary remarks apply to both applications, and I'd like to take appearances of the parties now. Could the representatives of Pecos County WCID No. 1 please stand and announce who is here today for the record.

Melanie McKenzie: I am Melanie McKenzie, attorney for Pecos County WCID#1 along with a representative of the District.

Is anyone here on behalf of Fort Stockton ISD?

Note: No one was present at this time for Fort Stockton I.S.D.

Paul, do you know whether the School District want us to take action on their application in their absence?

Paul Weatherby: They have reviewed all the information, and choose not to come to the hearing.

I see a number of folks here from Fort Stockton Holdings. Could y'all please stand and announce who is here today for the record.

Ed McCarthy: Good Morning Mr. Dorris and members of the Board. My name is Ed McCarthy; I am an attorney for Fort Stockton Holdings. I have with me today Mr. Brock Thompson and Mr. Jeff Williams.

John Dorris: OK, now I'd like to bring all of our Board Members up to speed and make sure all the parties understand why we continued the last hearing and what our plan is today. At the September 8th hearing, Fort Stockton Holdings complained that they did not have the permit application files for these two applicants. Mr. McCarthy asked for a continuance to get the chance to get copies of the application files and review those. Our General Manager disagreed and believed that he had already provided those files to FSH. Whether or not FSH had the files, there was agreement reached that we'd make sure FSH has the files they've asked for and set the hearing for today. So, here we are. It's my understanding that Mr. McCarthy has the complete files now. Mr. McCarthy, is my understanding accurate?

Ed McCarthy: Mr. Dorris, I would like to approach the podium. Ed McCarthy for the record. I don't know if I have complete files or not. I have brought with me this morning what I would like in connection with the Pecos County WCID#1 an exhibit that I would like to offer as an exhibit as a demonstrative exhibit designated as FSH 1, and what it contains I will represent to you is the letter that I submitted on July 11, 2011 after we had been granted party status.

Mike Gershon: Ed, if I could cut you off for just a minute. We're not yet in the hearing. We're in the hearing, but we have not yet turned it over to you yet. It's important that we know before we proceed whether you believe you have a complete file now or not, and have you received what the General Manager provided you? It is the General Managers position that he has given you the entire application file for both pending applications.

Ed McCarthy: I have with me what I have received under a post mark of July 20th a package related to Pecos County WCID#1 and Fort Stockton Independent School District. I also have copies of what I received by email from your partner Kristen Fancher, an email dated September 22nd information related to those two applications. That information does not include any communications between the General Manager and the Districts, or the General Manager and the hydrologist. So, in terms of looking for information – I think there would be more things, but I don't know. I have what I have.

Mike Gershon: Let me address this. I think you have answered the question, you have received what the General Manager or I, through his office. Let me ask the question of Paul. Paul that information that we have provided represents a complete application file, correct?

Paul Weatherby: Yes it does.

Mike Gershon: Ok, then we can press on. Mr. McCarthy we will get back to you.

Ed McCarthy: OK, thank you.

John Dorris: Then my understanding was correct?

Mike Gershon: Your understanding is correct.

John Dorris: Is that agreeable Mr. McCarthy, that my understanding is accurate?

Ed McCarthy: Your understanding that I have received documents is correct, whether or not it is a complete application or not, I don't know.

John Dorris: Paul, have you given Mr. McCarthy all the files?

Paul Weatherby: Yes, I have.

John Dorris: All right, given where we're at, and given that our General Counsel has joined us today, I'd personally like to ask him some questions in Executive Session. It's 10:14 A. M., and let the record reflect we're going into Executive Session in accordance with the Texas Open Meetings Act Section 551.071, to have a client-attorney privileged discussion with our attorney.

John Dorris: OK, we are going to reconvene the hearing, it is 11:19 A. M. We will reconvene the hearing, and at this time we are going to take a break for lunch. (The time is 11:20 A.M.)

Mike Gershon: Here's the deal, as every body in the room knows we have food brought in for the Board, and I think we share with folks in the crowd as well. It is supposed to arrive at 11:30, we can start the first hearing right now, but I think that folks are going to get hungry; it seems like a good time to take a break. We weren't sure how long executive session was going to go, we thought we would have an opportunity to get through the District's hearing before lunch, and we apologize, but it is what it is, and its 11:20 now, and we'll probably go until and break until 12:30.

Alvaro Mandujano, Jr.: I have another meeting at 1 P. M. But I figured I would get there a little late.

Melanie McKenzie: One thing I can offer is in another 5 minutes, Mr. McCarthy and I have, correct me if I'm wrong please Mr. McCarthy, is we have worked out a stipulation and they do not object to Pecos County Water Control and Improvement District #1's getting the water. So, I'm trying to figure out what it is he is objecting to. But I would like to introduce that stipulation onto the record – if we don't have the recording on I can start over.

Mike Gershon: Well come on, If you haven't started the stipulation, please come up to the mike, because we are having recording....why don't we do it after lunch because it would be good for the General Manager to be here and hear as well.

Melanie McKenzie: OK

Mike Gershon and John Dorris: We are recessed for lunch until 12:30.

John Dorris: OK. 12:30 P. M. We are back in open session, and ready to continue the hearings. Let me pick back up right where we left off. 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. Our legal counsel, Mike Gershon of the Lloyd Gosselink law firm, will assist me and the Board in addressing any legal or procedural issues.

This hearing was continued to give FSH a chance to review the pending applications and to address FSH's complaints that they were confused about the quantity of water requested and what applications were before the Board. I know that the application files have been in front of the Board at the earlier hearing dates, but let's be clear for the record just what is supposed to be the "evidence" in the record. Our audio recording from our June and September meetings are part of the record. I recall that Mr. Cuco Rangel and Mr. Paul Weatherby provided testimony in September, and were subject to some cross-examination by FSH's lawyer, Ed McCarthy. That's obviously part of the record and it's captured on our audiotape. Also, I'm going to take notice of the District's two official application files and admit those into the record for each proceeding. Any objections? (No objections were heard.)

We had an opportunity for public comment on these applications previously, and won't be taking comment today unless I hear from someone in the audience that there is good cause to allow it. Hearing none, let's move on to allow the parties to add whatever evidence they'd like to, to make their case. I'm looking to conduct this hearing in an efficient but fair approach. With Mr. Gershon's assistance, I'll try to keep things moving along. We gave the parties instructions on June 21st to coordinate and come up with a proposed procedural schedule to address discovery and hearings process. None of the parties took advantage of this opportunity, even after being reminded at the September 8th hearing. Absent an interest by the parties to pursue a particular type of schedule, our defaults to conduct the hearing in accordance with our rules and Chapter 36 of the Water Code, and my rulings. I'll note for the record that we advised the parties on September 8th that we'd have the hearing on the merits today, and the parties indicated their agreement to do so.

I'm going to impose time limits since this is our second round of the hearing on the merits, and both applications ask for an amount of water well under our threshold for hydrogeological reports and that has already been authorized during our interim authorization period. Each party will have a total of ...

Ok, Board it is up to us as to how much time we want to give them for their direct case and cross-examination. Mr. Gershon said it is up to us and he suggested 30 minutes. I'd like it to be 15. What do y'all want?

Mike Gershon: In other contested case hearings we've had, we set some time limits. We have gotten input from the parties as to how much time they think they will require just to be fair to among all the parties, you have taken that into consideration and you have developed some time constraints. Now you do not have to time constraints, and have the parties be efficient in getting the information in front of you. The direct cases, the cross. You can either ask Mrs. McKenzie and Mr. McCarthy what type of time they think they will need.

Melanie McKenzie: I would say no more than 30 minutes from our prospective. However if there are issues that Mr. McCarthy has that are procedural and not substantive in nature, I would like to get those resolved so that my clients permit is unchallenged by Mr. McCarthy and his client. I think we might could determine this if we enter a stipulation on the record that Mr. McCarthy does not object to Pecos County Water Control and Improvement District #1's getting the water, he just doesn't think they have jumped through enough hoops to get it and I'll let him state how he thinks we can work out an agreement on this. If there is no objection to them getting the water, we may not need to have a hearing at all. If there are procedural things that he would like to have responded to, I'd like to take the opportunity to do that today. Right now Mr. Rangel and Mrs. Smetak are getting some documents that Mr. McCarthy said he would like to have. So that might eliminate any type of objection at all. I would like to request that if there is no objection that Fort Stockton Holdings withdraw the protest so that we don't waste more time.

Mike Gershon: It sounds to me that on the factual issues need to be developed for your client's application that you two are going to reaching stipulations which tells me that we may not have folks sworn in and testify which leaves us to legal arguments. If Mr. McCarthy has concerns with the process – I think y'all are both capable lawyers and can efficiently convey those remarks to us in a reasonable amount of time.

Melanie McKenzie: But as I, representing Pecos County WCID#1 would like to give FSH the opportunity to today, to get the information that they need so that there is no question that this is a valid permit that my client is receiving. So, would you like to stipulate that you don't object to substance on their application?

Mike Gershon: Well, let's focus on this, let's focus on time before we dig into the applications. How much time Ed do you need for each application?

Ed McCarthy: Thirty minutes should be more that enough. I don't think it will take that much.

Mike Gershon: Melanie, I think I heard you say thirty minutes as well, so why don't we do that and go with thirty minute time limits.

Melanie McKenzie: May we put our stipulation on the record so that at least we know that he's not objecting to – that Fort Stockton Holdings does not object to my clients request for water.

Mike Gershon: Yes, we are there in about 45 seconds. Let John kick it off.

John Dorris: Each party will have 30 minutes for their direct case and cross examination. Today, we'll likely make a decision on these applications as we do with all other non-interim permit applications under Rule 11.11.10. So as we usually do, we'll start with the applicant's case. Then we'll turn to the protestant, then General Manager.

Pecos County WCID No. 1's application file is in evidence. And Mr. Rangel testified at the last hearing with cross-examination by Mr. McCarthy. Is there anything further the District would like to testify about?

Melanie McKenzie: We are ready.

John Dorris: Who do you have with you?

Melanie McKenzie: Mr. Rangel.

John Dorris: Are you ready to be sworn in Mr. Rangel?

Refugio Rangel: Yes sir.

Melanie McKenzie: Can he testify from this area, or...

John Dorris: Yes, that's fine. Is that fine with everyone?

Melissa Mills: I had rather he was closer to the recorder.

John Dorris: Yes, that might be better by the microphone.

Janet Groth: Can we move the recorder closer to him?

Melanie McKenzie: Can you please state your name for the record.

Refugio "Cuco" Rangel: Refugio Rangel

Melanie McKenzie: What is your position with the Pecos County Water Control and Improvement District #1?

Refugio "Cuco" Rangel: I am the General Manager.

John Dorris: I need to swear him in.

Melanie McKenzie: And me as a lawyer?

Mike Gershon: No you are fine, you are not testifying.

John Dorris: Mr. Rangel do you swear to tell the truth, the whole truth, so help you God?

Refugio "Cuco" Rangel: To the best of my ability.

Melanie McKenzie: May I proceed? Now that you have been sworn in, what is your position with the Pecos County Water Control and Improvement District #1?

Refugio "Cuco" Rangel: I am the General Manager.

Melanie McKenzie: OK. I am going to call it "The District" because of the long name. Right now you are seeking an additional 246 acre feet to your other 385 permitted amount correct?

Refugio "Cuco" Rangel: Correct.

Melanie McKenzie: Your application states that you are seeking this 246 acre feet and when you add that to the 385 acre feet that equals the 631 acre feet.

Refugio "Cuco" Rangel: Yes, that is correct.

Melanie McKenzie: So in the application when you have a reference to 631 acre feet, that is your combined?

Refugio "Cuco" Rangel: Yes.

Melanie McKenzie: We have had an opportunity to visit with Fort Stockton Holdings counsel, and on some information that they would like and one of the things they would like you to have and make sure you have jumped through enough hoops and entitled to this water is "If the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use". Isn't it true that you all own the property where the seven producing wells are?

Refugio "Cuco" Rangel: Yes we do.

Melanie McKenzie: And so there is no need to produce any additional document since you own your, the District owns the land.

Refugio "Cuco" Rangel: The District owns those two sections of land, yes.

Melanie McKenzie: These wells that you will be producing the additional 246 acre feet are the same wells, correct?

Refugio "Cuco" Rangel: Yes, we will just be running them longer.

Melanie McKenzie: Has the GPS coordinates for those seven wells been provided?

Refugio "Cuco" Rangel: Yes.

Melanie McKenzie: And, has this been admitted into evidence, what Mr. McCarthy says he has been provided?

Mike Gershon: What Mr. McCarthy says he has been provided.

Melanie McKenzie: Yes, he said this is what he has received from Mr. Weatherby, has this been admitted?

Mike Gershon: What was admitted was the application file as Paul Weatherby has identified the application on file. We have not reviewed page for page the documents Mr. McCarthy gave you, but I would like for Paul to so before we wrap up the hearing to be clear as to what is or is not in the application file from the documents that Ed has given you. The long and short of it is

that the set of documents Ed gave me has not been admitted into evidence. The physical documents in my hand have not been admitted into evidence. Copies of some or all of them may have been admitted with Paul's file.

Melanie McKenzie: We would like for it to be offered into evidence to show a demonstrative piece of evidence to show what he, what Fort Stockton Holdings, says he has received.

Mike Gershon: I don't see the harm in having duplicate copies of documents as long as we have an opportunity to look at them, so if they are relevant and ...so let me ask you this Melanie, the set of documents you are holding – is that the same set that...

Melanie McKenzie: Mr. McCarthy provided it to me this morning.

Mike Gershon: And if you could just read what we think is the same version. What is the first document there?

Melanie McKenzie: Fort Stockton Holdings dash PCWCID#1, and then it goes all the way through, and they are bates stamped, and the last page is 105.

Mike Gershon: OK, we are looking at the same documents.

Melanie McKenzie: Mr. Rangel when I handed that to you, have you had an opportunity to go through there and look at the seven wells and see if the GPS locations were provided in there?

Refugio "Cuco" Rangel: Yes, I saw the numbers, I didn't actually at.....they are on there. We gave them GPS numbers, somebody else must have taken, they are real close, no two GPS systems will mark the same.....you can see those numbers.

Melanie McKenzie: Right. So in addition to providing the location of the seven wells you will be providing from, is there additional information that has been provided to the District?

Refugio "Cuco" Rangel: Yes. I think that we have additional wells that are not in production. We had to register those wells with the District and I think that information was also sent to Fort Stockton Holdings.

Melanie McKenzie: OK. How many clients do you have that you provide water to?

Refugio "Cuco" Rangel: Right at 1,000.And we're....yes right at 1,000, I think we are 998.

Melanie McKenzie: And you'll have additional customers. This permit, how long are you seeking it for?

Refugio "Cuco" Rangel: For 10 years.

Melanie McKenzie: Basically that was a question, is how long the permit would be. You are asking for 10 years. Correct?

Refugio "Cuco" Rangel: I am asking for 10 years. That is correct.

Melanie McKenzie: To the extent that may not be in the application, we would like that to be included in the application, and part of the record. Because, this is another one of the items Mr. McCarthy said he did not have, and that was the duration of the permit. All they are asking for is ten years.

So that was item number 11, 10 and 13. So far we've looked at item 11, 10, 2, 3 and 13 of additional information that Mr. McCarthy had to satisfy his procedural objections to this permit.

11.10.2 also has three items that Fort Stockton Holdings has stated that they would like to have. One of those is a location map of all existing wells within a half mile radius of the proposed well or the existing well to be modified. Are you modifying any wells?

Refugio "Cuco" Rangel: No.

Melanie McKenzie: OK, so that would not be needed if you are not modifying any wells.

Refugio "Cuco" Rangel: We are not modifying any wells.

Melanie McKenzie: The other item Mr. McCarthy was requested is a map or other document from the Pecos County Tax Appraisal District indicating the ownership and location of the subject property.

Refugio "Cuco" Rangel: Shirley is working on it right now; she is down at the Courthouse.

Melanie McKenzie: She's got it. Is this two separate copies? So what you are looking at is for section 7, OK keep those together. And this is what, section 11?

Refugio "Cuco" Rangel: Yes, this is the property on section 11 in Block 49.

Melanie McKenzie: OK, we would like to supplement the following documents from the appraisal district in the event that you don't already have them. It shows ownership of the land. I would like to show this to Mr. McCarthy and see if this satisfies his concern. (Shows documents to Mr. McCarthy for review). This is for section 7 and this is for section 11 from the Appraisal District.

Ed McCarthy: This is multiple copies of the same thing?

Melanie McKenzie: Is this multiple copies of the same thing?

Shirley Smetak and Refugio Rangel: Yes. There is one page for each one, the rest are copies.

Ed McCarthy: I have no objection to the offering.

Melanie McKenzie: Can I offer this Section 7 and Section 11 Appraisal District records showing ownership into the record as exhibits one and two?

John Dorris: Do you have any objection Mr. McCarthy?

Ed McCarthy: No Mr. Dorris, I don't.

Paul Weatherby: Which one is exhibit one?

Mike Gershon: What would you like to call these?

Melanie McKenzie: PCWCID#1 – 1 and PCWCID#1 – 2.

Melanie McKenzie: Item #11.10.2 (c) Fort Stockton Holdings has requested information concerning that. What it requests is a document indicating the location of the proposed well – this is not a proposed well is it?

Refugio"Cuco" Rangel: No these are existing wells.

Melanie McKenzie: OK, it says "or the existing well to be modified" – these wells are not going to be modified are they?

Refugio"Cuco" Rangel: No.

Melanie McKenzie: OK, so that does not apply to you correct?

Refugio"Cuco" Rangel: We are not going to modify them.

Melanie McKenzie: Right. If you were going to modify – who are the adjacent property owners out there?

Refugio"Cuco" Rangel: Mendel Estate for the most part. There might be some property owned by Texaco.

Melanie McKenzie: OK, but you are not going to be modifying any wells, you are just asking for an additional amount to service customers that you have.

Refugio "Cuco" Rangel: Yes.

Melanie McKenzie: And, for prospective growth, because a lot of people are moving north of ten.

Refugio "Cuco" Rangel: Yes.

Melanie McKenzie: And why are they doing that?

Refugio "Cuco" Rangel: Well a lot of them is just to get away from the city, they like the rural county life.

Melanie McKenzie: No need to get permits if you build.

Refugio "Cuco" Rangel: Well that is another thing, it's easier build, they allow mobile homes; with the City most of the part they don't allow mobile homes, and that is about the easiest or cheapest way for a young couple to start out with, you know, buying a couple of acres and putting in a mobile home. But, for whatever the reason people are moving out there.

Melanie McKenzie: OK. The rate at which your water is going to be pumped...is it going to change? If this permit is granted, is it going to change the rate per minute pumped from your seven wells?

Refugio "Cuco" Rangel: No. They will continue pumping the same rate per minute, except they'll be pumping a longer time to meet the demands.

Melanie McKenzie: OK. When the demand is not there, you won't be pumping?

Refugio "Cuco" Rangel: No.

Melanie McKenzie: And so this is going to be based upon, even if this permit is granted, if it's not needed, you are not going to be pumping.

Refugio "Cuco" Rangel: Yes, that is correct.

Melanie McKenzie: At this point and time, is there any other information that you would like to offer this Board as to why this permit should be granted?

Refugio "Cuco" Rangel: No, I think we have went over everything that we needed.

Melanie McKenzie: Have you provided quite a bit of information to this Board to support this application.

Refugio "Cuco" Rangel: Yes.

Melanie McKenzie: Have you been crossed examined before by Fort Stockton Holdings lawyer?

Refugio "Cuco" Rangel: Yes.

Melanie McKenzie: Have you provided all information that you have been requested to provide?

Refugio "Cuco" Rangel: I have provided every piece of information that the Middle Pecos Groundwater District has asked me to provide.

Melanie McKenzie: You are willing to provide any additional information to make sure we have this ... we have our ducks in a row, and we can get this permit granted, and not subject to challenge by Fort Stockton Holdings.

Refugio "Cuco" Rangel: To the best of my ability.

Melanie McKenzie: Right now you have already used a large portion of your water this year, correct?

Refugio "Cuco" Rangel: Yes. We have a permit for 385 acre feet of water, which it basically boils down to 125 million gallons of water per year. Last month we were already at 113 million gallons and we still have three more months to go this year. If everything goes the way it is going, we will exceed that pumpage.

Melanie McKenzie: You were privy to our conversation with Fort Stockton Holdings lawyer today? You were a part of that conversation?

Refugio "Cuco" Rangel: Today?

Melanie McKenzie: As far as they don't object to your getting the water, they are just objecting because they don't feel you have gone through the procedures.

Refugio "Cuco" Rangel: I've heard a little bit of it.

Melanie McKenzie: OK. Would you request that Fort Stockton Holdings withdraw their contest since they are not objecting to the amount that you are requesting.

Refugio "Cuco" Rangel: Yes.

Melanie McKenzie: OK. At this point we would request that Fort Stockton Holdings withdraw their protest to this application, which is a reasonable amount for real people with all information that is needed provided. Mr. Rangel did even go get a letter from your Board saying Yes we do need this water.

Refugio "Cuco" Rangel: The letter that I got was that they, that I have the authority to ask for the permit, sign whatever documents need to be signed, and that our Board President does also. The Board is well aware of the procedures that have gone on, we have had talks about ...what I am doing has not been any secret that the Board does not know about.

Melanie McKenzie: Right. And you are not planning on wasting any water, are you?

Refugio "Cuco" Rangel: No.

Melanie McKenzie: And, you are not going to go and do anything that will violate the District's rules.

Refugio "Cuco" Rangel: Correct. If we need the water we'll use it, if we don't need it, we won't use it.

Melanie McKenzie: OK. Thank you very much for your time. Mr. McCarthy may have questions for you.

Ed McCarthy: Mr. Rangel, my name is Ed McCarthy, we have met I believe, and you understand that I am the attorney for Fort Stockton Holdings.

Refugio "Cuco" Rangel: Yes

Ed McCarthy: I just have a couple of questions to clarify some things that Mrs. McKenzie asked you about. When you responded to Mrs. McKenzie with regards to modifying your wells, what was your understanding of what was meant by modifying a well?

Refugio "Cuco" Rangel: My understanding is to in any way change them, add to, or make them produce more water.

Ed McCarthy: So the fact that you are asking to produce more water from those wells, in your opinion, was not a modification?

Refugio "Cuco" Rangel: Well, not to the well itself. That was my understanding. Like put a bigger pump to produce more water, no we are not going to do that.

Ed McCarthy: So your understanding of modification is the physical alteration.

Refugio "Cuco" Rangel: Yes.

Ed McCarthy: Thank you, I have no further questions for you Mr. Rangel.

Refugio "Cuco" Rangel: Yes sir, thank you.

Melanie McKenzie: One further question. Your request for this additional amount of water is not going to increase the rate of pumpage per minute?

Refugio "Cuco" Rangel: No, the rate of pumpage per minute will be the same. It may pump for a half an hour longer to meet the demand and we will not pump any more. My answer to you is yes.

Melanie McKenzie: OK, Thank You.

Mike Gershon: Mr. Rangel, if the Board has any questions, now is the time for them to ask. Let me ask, you are asking for a ten year term permit, correct?

Refugio "Cuco" Rangel: A ten year permit. My understanding is that if in 10 years we need more water, we can come back to you.

Mike Gershon: Just to be clear, for everyone, if at any point and time you have a need for more water, you can come to the Board and ask them, and if the water is available and there are no adverse effects, you have the right to come and ask for more water, if you have a need for the water.

This Board will grant permits for longer than one year. Our default is to grant permits for one year terms. This is really just an issue for the Board to think about. You have the authority to grant a ten year permit, you have the authority to grant a five year permit, again default is one year. I think it is reasonable for a utility to be coming in and showing you a reason of population growth and projections. It is reasonable to be planning on that growth based on a recent trend in the development of population growth. If the Board has any interest in going with a shorter permit, I'm not suggesting that, but my hunch is that the Water District may need the same amount of water, they may not change. I just wanted the Board to be aware of this since we are deviating from the norm. We can do it, and if you have any additional comments, now is the time to ask.

Houston McKenzie: Why, do you think you will not need it after ten years? Seems like you might ask for it in perpetuity, we are going to have to have another hearing in ten years. I don't know, it just...

Refugio "Cuco" Rangel: My thought on the ten year is that I didn't want to do it for one year and then have to come back every year. I just thought ten years and we will not have to go through this again unless we need the water. But you all can decide if you want to grant 5 years, it is up to you.

John Dorris: Any one else?

Refugio "Cuco" Rangel: Thank you all.

John Dorris: Mr. McCarthy, now is the time for you to present your presentation for the Board to consider for the Pecos County WCID#1.

Ed McCarthy: Thank you Mr. Dorris and members of the Board. My name is Ed McCarthy and I am here on behalf of Fort Stockton Holdings. The only thing I would like to offer to the Board this afternoon is the exhibit that I presented earlier this morning began discussing as a demonstrative exhibit, I am not offering it as the truth of the matter as asserted in, I am offering it to reflect in the record what I received and was represented to me as the application before you that is being considered by management, recommended by management and would be voted on by the Board.

At this time I will also confer with some clarification matters that Mrs. McKenzie had represented to the Board and is correct that Fort Stockton Holdings does not oppose the amount of water the Pecos County WCID#1 is seeking, we never said we did. We did request a public hearing on this matter. We do not oppose the Board issuing an application which is properly processed which complies with the Districts rules, and which this Board, after hearing all the evidence pursuant to its rule 11.10 makes the determination set forth in that rules that the issuance of the permit will not have an adverse impact, and will not cause an increase in the decline in the aquifer, and will comply with the Districts management rules as recently adopted in your management plan the end of last year.

I can't stipulate as to whether or not those things have occurred. Those are decisions the Board has to make. I think, we think, there are certain amounts of evidence that are required to be presented and information. The information that we had seen from the application, we didn't feel that that had occurred. So, we requested a public hearing which is our right to do so as a permit holder.

At this time I would offer as a demonstrative exhibit only what Mrs. McKenzie has already offered which is the document which in the footer reads FSH 1 PCWCID1 page 1 and goes on through page 105. And other than asking for a ruling on that request we have nothing further, and I will conclude.

Mike Gershon: Hold on just a second Ed. I may have a question. Mr. McCarthy I want to be clear about the role Fort Stockton Holdings is taking in this proceeding. Am I to understand that Fort Stockton Holdings is not of the position that this permit if granted would adversely impact Fort Stockton Holdings interest?

Ed McCarthy: No that's not what I have said. I have said that we do not object to the District receiving a permit of 246 acre feet.

Mike Gershon: How is it that this permit would adversely affect and impact Fort Stockton Holdings?

Ed McCarthy: I haven't said that it would.

Mike Gershon: So Board, I take issue with the position of Fort Stockton Holdings coming to you and saying that they have a justiciable interest a legal right, duty or obligation that is implicated by the permit if granted. Fort Stockton Holdings has just told you that that is not why they are here. They are here complaining about the process. They are not here complaining about the application.

Ed McCarthy: That is not what I said Mike, I said we were here to see the evidence and review the application that includes the hydrological analysis and the review of the district. We have not heard from the District and heard their case yet. And I don't know what hydrological analysis they did.

Mike Gershon: Ed....

Ed McCarthy: And the rules allow us to request a hearing based upon the potential for adverse impact.

Mike Gershon: Correct.

Ed McCarthy: And that's why we came, and that is what we asked for.

Mike Gershon: And in good faith, this Board confronted on any application and asked the potential protester to describe its justiciable interest and to assert that there is a potential for adverse impact based upon the activities that if permitted are adverse. I just heard you articulate that it is not the permit holder's activities ...

Ed McCarthy: I haven't seen anything in what has been presented. But it is not my client's determination; it's this Board's determination on those issues. And we still haven't heard the General Manager's case and hydrological analysis of this application and what it does.

Originally, Mike, as presented and posted this application was for 631 acre feet of water, which would have triggered the requirement for a hydrological analysis to be done by the applicant. And, we were looking to receive that information.

Mike Gershon: Ed, let me interrupt you right there...

Ed McCarthy: Water under the bridge.

Mike Gershon: I don't have a problem at all with this Board having granted you party status based on the representation you made back in June. You had a justiciable interest as a property owner that draws from the same aquifer. Fort Stockton Holdings claimed that there could potentially be an adverse impact. No problem. Now that you are resting your case, you just presented to the Board that you would not be adversely impacted by this permit.

Ed McCarthy: I said we would not oppose the application, the granting of the permit for 246 acre feet based upon a properly presented application and determination by the Board with things in its rules that it is required to do.

Mike Gershon: That is a recent development. This is the first time that the District is hearing that evolved position of Fort Stockton Holdings. So I just want to be clear about all of this. Fort Stockton Holdings as a protestant is essentially withdrawing its protest. Essentially, in effect you said we are no longer adversely impacted by the permit.

Ed McCarthy: No, I haven't said that the application fully complies with the Districts rules on the requirements. I said that the amount that is being requested – we are not opposed to. That is different than whether or not the application is complete and can be properly granted under the law.

Mike Gershon: OK. So to make sure that we are framing this up so that the applicant and Mrs. McKenzie has an opportunity for rebuttal and closing remarks...let's make sure we are framing it up the issue – that Fort Stockton Holdings is raising. Please summarize for us what the reasons are for this Board to deny the application.

Ed McCarthy: There is information required by the Districts rules that has not been fully presented. The question I asked Mr. Rangel that based upon his interpretation, and he is not a lawyer of what constitutes a modification to an existing well under an amendment as to whether or not there are requirements for a permit application to have to be complied with. His interpretation apparently, and his lawyers are, is that because they didn't physically alter the well

that those requirements don't apply. Regarding adjacent land owners and well owners that could be affected and other matters – we disagree.

Mike Gershon: Are there any other reasons?

Ed McCarthy: I think that, I don't believe that ...I'm sorry I am going through a list of things that I gave to Mrs. McKenzie. I think that is the key element that is missing at this point that I can identify at this point and time, there may be others.

Mike Gershon: The Board said that the General Manager can address whatever it was. I think the Board is well aware of what it is to modify a well. So we can address that.

Ed McCarthy: Another thing is the applicant can't address is how the District has addressed or analyzed the overall hydrology and how that can affect the overall aquifer and its management plan and how that is going to operate and how that could affect Fort Stockton Holdings wells with this permit.

Mike Gershon: Thank you Mr. McCarthy.

John Dorris: Thank you. Paul we know your recommendation is that the application should be granted. Do you have anything to add beyond what you have said at previous hearings?

Mike Gershon: Let me be clear about what I understand the presiding officer just said. Your General Manager Paul Weatherby has made known to all the parties and the Board that his recommendation is to grant the application, he made that announcement if you will probably at both hearings, both in June and in September. In September, at least the audio tapes I have listened to. So if there is anything to add to that, now is the opportunity for Paul. I will tell you that our District's interpretation of modifying a well is consistent with the applicant's position. They are not modifying the well, they are not going to be producing a different rate, they are not reworking the well, and they are not changing out their pumps. They will continue to operate the wells in the same manner that they have operated in the past. Recognizing that they pull more water out of the wells because they will pump for longer periods of time, and store that water directly into their utility system.

With that said, I am confident but it is the Board's decision ultimately if you want to change the way we have looked at well modifications over the years. We do not have well modification in this case.

There is additional information in the application file from TCEQ and their investigation of these wells and as reflected in those documents they are in compliance with TCEQ in regards with public water supply wells. There has not been any additional requirements to satisfy TCEQ with regards to the expanded use of the wells. So, it is up to you all when Paul builds upon what he has already said on September 8th, now is the time or not, then we can turn it back to Mrs. McKenzie to close and provide rebuttal.

Melanie McKenzie: I do have one clarification I would like to make. Mr. Harvey Gray is President of the PCWCID#1 Board, can I put him on the stand real quick, it will take one question and one answer?

Mike Gershon: Sure, as long as you are comfortable with, I mean Ed will have the chance to cross examine him.

John Dorris: Mr. Gray, do you swear to tell the truth, whole truth, and nothing but the truth so help you God?

Harvey Gray: Yes.

Melanie McKenzie: Just to clarify, Mr. Rangel presented how many clients and meters the District has, but can you tell us how many actual people that are serviced by the Water District?

Harvey Gray: Well, I wasn't here when y'all talked about this, but we have about a thousand meters in service, but actual customers are about 4,000, not just 1,000.

Melanie McKenzie: Thanks for that clarification. Also, one more thing, you all sought less than 250 acre feet and that does not require a hydrological report or any type of hydrologist study does it?

Harvey Gray: Right.

Melanie McKenzie: OK, thank you. Now Mr. McCarthy may have questions for you.

Ed McCarthy: I have no questions Mr. Dorris.

John Dorris: OK. Does PCWCID#1 have any rebuttal?

Melanie McKenzie: Are y'all ready for closing, or rebuttal? I don't have any rebuttal, but I do have closing.

John Dorris: Go ahead.

Mike Gershon: Well, if you have closing you should go last, unless the General Manager wants to go, the way we typically do it is the protester

Melanie McKenzie: Then I thought he went, then I would go and...

Mike Gershon: Actually, that is a good point, now that I think about it

Ed McCarthy: Do we get to cross examine Mr. Weatherby?

Mike Gershon: If he is going to provide additional testimony today, then yes. If not then no.

John Dorris: Are you going to provide additional testimony?

Melanie McKenzie: OK, then may I close? And you know I am used to in trial if I am the plaintiff, I close, then the defense closes, and I get one more little bit.

Mike Gershon: Yes, but limit it to responding to his remarks in closing.

Melanie McKenzie: May it please the Board, Pecos County Water Control and Improvement District #1 needs this additional request beyond the permitted amount and will not adversely impact the aquifer and the water is for real customers with a real need, reasonable use, reasonable rates of pumpage, we don't have any kind of millions of gallons a day going through their pumps, it is going to be increased usage to the extent if they need it. They are not going to pump it if they don't need it. Right now they have used a lot of water this year because of the record drought, and they have complied with the rules, and have been willing to provide any information needed. And it is my understanding that Fort Stockton Holdings does not object to the actual substance of having this permit granted. They are only complaining about some hoops that maybe haven't been jumped through, and I would like to tell this Board that my client is willing to jump through any hoop and provide any information that this Board feels that they need to make sure that this is a sound good decision of this Board to grant this permit. Thank you.

Ed McCarthy: Members of the Board, Mr. Weatherby, Mr. Gershon, Thank you. On behalf of Fort Stockton Holdings the few comments that I have, contrary to how silly some may describe it, this is not a circus, this is not about jumping through hoops. This is about the Boards statutory duty, its stated mission to protect the aquifer, to observe the rules that it has gone to great pains to adopt, to comply with those rules, to comply with your management plan, and to comply with the statutory requirements of chapter 36. In deliberating with respect to this permit, we have asked that you review the evidences of record with or without the expertise that should or should not accompany issues regarding hydrology, and make your decision based on what is statutorily required. Thank you.

Mike Gershon: Hold on, does the General Manager have a closing?

Houston McKenzie: Can the Board ask questions of Mr. McCarthy?

Mike Gershon: The Board can do whatever it wants, talk to your presiding officer.

Houston McKenzie: Can I ask Mr. McCarthy a question?

John Dorris: Yes, go ahead.

Houston McKenzie: Mr. McCarthy what specific rule or rules did you object to, I guess I didn't catch it, in regards to this application.

Ed McCarthy: The rule with respect to this permit application is rule 11.10 and particular rule 11.10.1 with respect to the findings and actions of the Board,

Janet Groth: I'm sorry could you repeat that again.

Ed McCarthy: The permit application requirements are described by rule 11.10 of your rules, and the particular ones because of the hydrology report because of the reduced amount not requiring a hydrological study be accompanying it is 11.10.1 contained the particular rules. And then 11.10.2 a through e. Then with respect to the Board action the rule requirements that are set forth, your rule 11.11.10 on Board Action - contains the considerations that the Board is supposed to take before taking action. I don't have my copy of Chapter 36 with me to make specific statutory notations, I apologize Mr. McKenzie. I believe 36.13, I mean 36.113 and 36.113.1 are the two provisions in Chapter 36 that apply. Thank you Mr. McKenzie.

John Dorris: I would like to state for the record that Junior Mandujano left at 1:12 PM, and we still have a quorum.

John Dorris: Paul is there any rebuttal?

Janet Groth: Well, I am asking him a question.

Janet Groth: Just for the record, I would like to state that one of the complaints was that there was no hydrological report and 11.10.2 (f) (1) states that if it is less than 1,000 acre feet that we don't need one. I have also looked at the definition of modify on page 6 of our rules and I agree, read it, and I think I have comprehended it correctly, and I believe the word modify as Mrs. McKenzie and the Water District have interpreted it is also my interpretation. So, I want to make it on the record that I have – someone – and if the Board wants to look at that it is on page 6.

Weldon Blackwelder: When you increase the production capabilities by more time, that's modifying by that definition, the way I read it.

Janet Groth: The capability to me means ...

Weldon Blackwelder: If you increase the time, you increase the production capability.

Janet Groth: That is not the way that I understand that, it is more production capability, means that the well can produce more. You are modifying the well so that it can produce more water. And they are not doing that, they are not widening the well, they are not deepening the well.

Mike Gershon: Saying it another way, it has the same capability today as a year ago I'd say, well it would be a year ago because they had the same because they haven't modified it and it will not change tomorrow or during the permit term. So the physical and mechanical characteristics of that well are today what they were yesterday. They have productive capabilities of probably producing a heck of a lot more than they are asking for.

John Dorris: My definition of modification of a well means you are going to deepen the well...

Several Board members in unison: Or put a bigger pump.

Melanie McKenzie: Presiding Officer may I offer something?

John Dorris: Alright.

Melanie McKenzie: If there were, since this is a big point, since he said it is a modification. Let's assume that his interpretation, we gave him the benefit of the doubt, a document indicating the location of the proposed wells – that has been produced. He has a copy of where the proposed wells are. He has the GPS coordinates and he has the information in the file that he has offered into evidence. The physical and mailing addresses of adjacent owners, I am not aware of anyone but the Mendel Estate being adjacent owners.

Refugio Rangel: Say that again.

Melanie McKenzie: Adjacent land owners to the seven wells, is there anyone besides the Mendel Estates?

Refugio Rangel: I guess if there are other wells...

Melanie McKenzie: Adjacent owners, people that live next door to where these wells are.

Refugio Rangel: Nobody lives there. Mr. Tinkler lives a few miles from there.

Melanie McKenzie: OK, Mr. Tinkler lives 2 miles away, and other than that, no one else lives out there?

Refugio Rangel: I haven't seen them.

Melanie McKenzie: OK. My purpose of offering this is it answers that question if there were an issue with rule 11.10.2 which we are not saying that we are modifying the well, but if someone wanted to give it the broadest interpretation there is not going to be anyone adversely impacted. That information isn't really....there isn't anybody out there.

Janet Groth: I saw the map and there are not any wells within a ½ mile radius, so we would not need that document if there aren't any.

Melanie McKenzie: Right. Thank you.

John Dorris: Are you through, have you finished?

Melanie McKenzie: I have finished, well not forever, but...

John Dorris: Paul, are you ready?

Janet Groth: I have another question for Mr. McCarthy. I have also looked through 11.10.1 through 14, and I can't find anything in there that we have not addressed in the application. Is there something specifically that you think we have overlooked?

Ed McCarthy: I believe we have identified everything and ...

Janet Groth: You said 11.10.1, there are 14 items in there. Do you have a specific one out of those 14?

Ed McCarthy: I have identified some of those for Mrs. McKenzie today and filled in some of those blanks. What I believe I was expressing to the Board was that on the Board's part to make sure that the process and complied with...

Janet Groth: You are talking softer and softer. We have looked at the rules and complied with the rules.

Ed McCarthy: Yes Ma'am. In short interpretation. I am not here to tell you how to interpret your rules or make your decisions. But for example, the rule you read regarding hydrology reports is not applicable, that it is a rule related to new wells. The rules that apply to amended wells is 250 acre foot increase triggering a requirement for a hydrology report. As I have said several times, as originally noticed this application was for 631 acre feet which triggers a hydrology report requirement.

Janet Groth: We have clarified that.

Ed McCarthy: Yes, and we have withdrawn the request for that information. What we haven't seen – what we have requested and seen no evidence of – I asked for – and I know what I received and asked to be admitted as a demonstrative exhibit, and I would still like a ruling from the Board on that - Is that I saw no evidence of hydrologic analysis being performed by the District in connection with the application, its review of the application, its compliance with its management plan. As presented and originally provided to me to which the application was approved and recommended has a bunch of holes in it which have now through this hearing process have largely been filled in.

Janet Groth: I am trying to comprehend what you have just said. You have now brought up the hydrological report again? That's an issue?

Ed McCarthy: No Ma'am. Not a hydrologic report by the applicant. The rules require the applicant if they are amending a permit for more than 250 acre feet or applying for a new permit for more than a thousand acre feet for the applicant to provide the District with a hydrologic report.

But in order to evaluate the application and provide you with information that allows you to make your determinations that I believe are required for Board action under your rule 11.11.10. There is no hydrologic analysis by your General Manager or your staff, with your staff hydrologist regarding the impacts of this application its compliance with your management plan or otherwise complying with your mission with respect to protecting the aquifer. We have requested that information, we did not receive any, I have not heard any testimony about it, all I have heard is that Mr. Weatherbv has said he recommends the application.

Houston McKenzie: I don't know, on an amount this small, and our Manager is familiar with hydrology in the area, why he wouldn't qualify for, you know to have the knowledge to make the recommendation for this small amount.

Janet Groth: It is moot anyway because they are asking for 246 additional...

Houston McKenzie: I know, but still he says that we need our hydrologist...is that what you are saying, that the District should have a hydrologist to look at it and see how it affects our management plan. Is that correct?

Ed McCarthy: What I have said Mr. McKenzie is that for our interpretation, the Board has heard no hydrological analysis or evidence in this hearing and that it will be making its recommendations and acting under rule 11.11.10 without the benefit of it. What the rules require an applicant to present are different from what the District should be analyzing and considering. You have this management plan, you have these rules and every application should be reviewed with those in mind. Because cumulatively they began to affect the aquifer and what the impacts could be. And at the moment, our position is there is no evidence of that in the record. Whether you want to act on that is your...

Houston McKenzie: Sure, I think you have a valid point, except in this case it is a small amount and our Manager is familiar with the area enough that I am willing as a Board Member to rely on his judgment. He doesn't have to have a badge; he's been hanging out with people with badges.

Paul Weatherby: Board, this application that you have looked at several times, speaks for itself. There is no reason for me to do any thing else but still continue to recommend that it be approved.

John Dorris: Mrs. McKenzie.

Melanie McKenzie: In conclusion, Pecos County Water Control and Improvement District Number One is aware of the fact that there is no formative objection as to the substance of their request. That there will be no adverse impact. That the protesting party doesn't really have party status now that the hydrological report wasn't required because the amount sought was less than 250 acre feet, and the component of rule 11.11.10 have been satisfied for this small request. Thank you for your time and consideration.

John Dorris: OK, Thank you. Does the Board have any questions at this time? Or do I have a motion to take action on the Pecos County Water Control and Improvement District Number One application.

Merrell Daggett: I so move.

Evans Turpin: I second.

John Dorris: Motion...

Janet Groth: Discussion?

Mike Gershon: Let's go ahead and make sure with Mrs. McKenzie and Mr. McCarthy that we have addressed any outstanding evidentiary request. Mr. McCarthy asked us to admit this demonstrative exhibit, the document is labeled as FSH-PCWCID 1 through 105 and I recommend that we admit that.

Evans Turpin: I make a motion we do that.

Mike Gershon: Well, your presiding officer can do that and I apologize because he already has.

John Dorris: Yes, we already have.

Mike Gershon: Are there any more rulings we need to make before the Board takes action?

Melanie McKenzie: With my two exhibits, and your exhibit is the whole file.

Mike Gershon: Correct.

Melanie McKenzie: That's it.

Mike Gershon: OK, Thank you.

John Dorris: We have a motion by Merrell Daggett and a second by Evans Turpin to accept this application. All in favor say Aye.

Janet Groth: I thought we would have further discussion first.

John Dorris: Any further discussion on this? (There was no further discussion) All in favor say AYE.

Board: Unanimous "aye"

John Dorris: All opposed? Motion carries.

Melanie McKenzie: Did you specify the duration?

Janet Groth: Ten years.

John Dorris: Yes that should be in there.

Mike Gershon: Well you read it approved in the full amount requested, that's all you need.

Melanie McKenzie: Thanks for that clarification.

Mike Gershon: What procedurally will now happen is the General Manager now has the guidance he needs to issue the permit, so Mr. Weatherby will do that.

John Dorris: Let's take a 10 minute break.
(Break began at 1:35 P.M.) (Break over at 1:57 P.M.)

John Dorris: It is 1:57 P. M. We will reconvene the hearing. Now let's turn to the school district application. Their application file is in evidence. Now is their chance to add any evidence. Do I need to swear in any witness'?

Mike Gershon: It is my understanding that there has been some discussions between the applicant and the protestant, and Mrs. McKenzie could you please ...how about a little discussion.

Melanie McKenzie: Very brief discussions with Mr. McCarthy. Mr. Traynham is here trying to get 40 acre feet for the athletic fields. Fort Stockton Holdings has an objection. 40 acre feet is less than 250 acre feet, there is no hydrology report that is required. I don't know what they are objecting to. Mr. McCarthy and I discussed him providing me a list of anything he needs from the school district, getting that to him, and possibly depending on what his client wants to do, withdrawing their protesting status so that it would be an uncontested matter before the next meeting. And so that would basically make...you could just decide it without having a contested case hearing. Or, alternatively, if you want to proceed with the contested case hearing today we can. You can find out what objections what Mr. McCarthy has to the Fort Stockton Independent School Districts application.

Mike Gershon: Well, it seems like we have an opportunity to efficiently resolve this without burdening everyone in the room and taking up their time. If Fort Stockton Holdings can resolve their issues informally with you then we can move on with other Water District business, I know that USGS is here, there are some other folks that are ready to have other important business. I think that is a great idea. If memory serves me, we have a rule that allows the General Manager to approve an application, or the Board can approve the application at a future meeting if the protests are withdrawn. And so it seems to make sense for everybody in the room to follow Mrs. McKenzie's lead.

Melanie McKenzie: And McCarthy you are in agreement that if we don't resolve it, we will try to resolve it, and then you will withdraw your objection, correct?

Ed McCarthy: Correct. It is also my understanding that the school district has an interim permit as well and can continue to withdraw the water.

Melanie McKenzie: Then I would suggest that we contact Mr. Gershon as to whether or not we are able to resolve it or not with that information. Is that the proper protocol?

Mike Gershon: That is fine. The General Manager or me. Why don't we, well let's think about this. Really, the presiding officer is still in charge. So, you can direct correspondence to Mr. Dorris' attention at the address of the District. You can copy me if it is by email; copy me if it is writing or a fax.

Melanie McKenzie: OK. We'll enter some type of rule 11 agreement if we do have a withdrawal of their contested status, and then if not, I guess we'll proceed with the contested case hearing at the next board meeting?

Mike Gershon: I don't know if we....

John Dorris: I don't like that at all.

Mike Gershon: To answer a couple of questions I am hearing up here...what's happening here is it is apparent that we might be in the same situation that we were in with the school district's application as we were with our last application. That the missing...the information that Mr. McCarthy thinks isn't in the application he can get directly from the applicant or the information that is in the application can be better explained by the applicant. And if that happens as it did in the other case that Fort Stockton Holdings would withdraw its protest.

John Dorris: We have burned four hours here today. I don't want to burn four more hours another time, so if y'all could just line your ducks up and not drag this on and on and on.

Melanie McKenzie: I can't make Mr. McCarthy to agree with me. My goal is to expedite by getting the information so there would be no objection to the school district having 40 acre feet to water their athletic fields. I'm sure that can be worked out. I can't imagine that it couldn't, but I'm only one person. I can't speak for Mr. McCarthy; he is saying he needs to get permission from his client too.

Mike Gershon: This is the approach the school district wants to take?

Melanie McKenzie: Yes.

Mike Gershon: Because the alternative is to press on like we did before and ask for testimony and have you guys work through what ever the issues are that Fort Stockton Holdings has. We don't know what those issues are. The Board doesn't, so those are the two options.

Melanie McKenzie: While we are here, if it benefits Mr. McCarthy, I can put Mr. Traynham on the stand and say why they need the water and have that foundation laid and we'll have a record of it, while we are all here if y'all want to proceed we can. And maybe Mr. McCarthy will withdraw their protest at that time.

Ed McCarthy: Looking at the hour, I don't think we have to put Mr. Traynham on at this time, because I think we will be able to work this out.

Melanie McKenzie: OK.

Mike Gershon: Do we know what Fort Stockton Holdings' issues are right now? With this application?

Ed McCarthy: We don't ...we haven't really begun this hearing.

Mike Gershon: Well, we have. We are on the record, and the hearing began this morning.

Ed McCarthy: In terms of the evidence of the application, we don't have the criteria all those things, we don't have.

Mike Gershon: And, so what I am hearing is that the two options are that from Fort Stockton Holdings' perspective, you are willing to participate in the hearing, live right now, and listen to that evidence as it is laid out by the applicant, perhaps the General Manager. Alternatively you can collect that in a formal way working through the Superintendent and Mrs. McKenzie.

Ed McCarthy: We believe there is missing information like there was with the other application and then during the breaks we had the chance to be supplied with something. What Melanie, Mrs. McKenzie is indicating is that during the continuation of this we can get that same information and we will be able to literally withdraw our hearing request.

Mike Gershon: Mr. Presiding Officer, it's up to you and the Board as to how you want to proceed. It sounds like the parties want to work informally. It's up to y'all how you press on.

John Dorris: Board?

Houston McKenzie: Let them work it out.

John Dorris: What if they don't work it out?

Janet Groth: We'll just hear it next month.

John Dorris: Yes, that is what I was saying is that I don't want to be....

Janet Groth: If it is going to take four hours, it will be now or next time, it doesn't matter.

John Dorris: Well, four hours...

Mike Gershon: Well, let's do this then, is that your pleasure...to let them work it out?

Ronald Cooper: I agree with letting them work it out and all, but we are paying an attorney down here today. If we have another hearing, we'll be paying Mike to come back out again.

John Dorris: Exactly.

Ronald Cooper: It is costing the District tax payers a lot of money.

John Dorris: Exactly. Now we need some assurance from somebody that they can work it out.

Ed McCarthy: Mr. Dorris, I have discussed this with my representatives that I have here today, Mrs. McKenzie presented the option, and we are committed to work with the school district and resolve the issues short of a contested case hearing with the applicant. Rather than take up more time this afternoon, we recommend the approach Mrs. McKenzie represented.

John Dorris: So you are pretty sure that we won't be back here in 30 days is what you are telling me?

Ed McCarthy: Yes.

John Dorris: I have your word on that?

Ed McCarthy: Yes you do Mr. Dorris.

John Dorris: OK.

Merrell Daggett: I make a motion to adjourn the hearing.

John Dorris: Do I have a second?

Janet Groth: I second the motion.

John Dorris: Discussions?

Houston McKenzie: I would like to say Thank You to Mrs. McKenzie.

Janet Groth: I would too.

Houston McKenzie: And Mr. McCarthy.

Mike Gershon: Alright, given that...ok, if they don't work it out, let's talk about a little deal that requires your General Manager to spend some time if you have to have another hearing. That is another ten day notice. We can either announce right now that they will work it out, we will do it at the next board meeting, or we can press forward knowing they are going to work it out. And then you will have to get your notice out, do you want to deal with that? Alright, if the parties don't work it out and you all have to pick back up at your next board meeting, the parties are hereby noticed that we will do that. There is a rule that requires ten days notice unless we announce at the time of the hearing that we are going to continue, and set the hearing on another date, and so, we are going to continue this hearing recognizing that the parties will likely work it out, but if we have to have a hearing, we will have it at the next board meeting whenever that shall be and we will provide notice under the Texas Opening Meetings Act like we typically do for the board meeting. I suspect that will be November 15th which is the 3rd Tuesday in November.

John Dorris: Yes, November 15th.

Mike Gershon: What time?

John Dorris: 1:00 P.M.

Mike Gershon: One'o'clock. Same place?

John Dorris: If we are going to have a hearing we better start the day before, if it's going to take this long.

Paul Weatherby and Janet Groth in unison: One is fine.

Ed McCarthy: Mr. Gershon I have no objection to any thing you have said and Thank You very much. I would add that I am willing to stipulate with Mrs. McKenzie right now so the Board has some time on the current date that we will not take any more than half an hour, and we won't have the breaks we have had before, so we will get this done efficiently assuming we have to do it at all.

Melanie McKenzie: I would enter that anyway... in audible.

John Dorris: We will take you at your word Ed. All in favor...

Ed McCarthy: Thank you sir.

Evans Turpin: We have a motion before us.

John Dorris: We have a motion before us to continue the hearing. All in favor?

Board in unison: Aye (vote was unanimous)

Ronald Cooper: I make a motion we adjourn this hearing...

Mike Gershon: Well, we are going to continue, so it is a continuation.