

Middle Pecos Groundwater Conservation District
Minutes of June 19, 2012

On this the 19th day of June, 2012, a Public Hearing on Applications for Water Well Drilling and Production Permits and a Regular Board Meeting was held by the Middle Pecos Groundwater Conservation District in the office located at 405 North Spring Drive, Fort Stockton, Texas, with the following members present, to-wit:

| | |
|--------------------|---------------------------------|
| Glenn Honaker | President, Precinct 1 |
| John Dorris | Vice President, Precinct 3 |
| M. R. Gonzalez | Secretary/Treasurer, Precinct 2 |
| Merrell Daggett | Precinct 2 |
| Weldon Blackwelder | Precinct 3 |
| Ronald Cooper | Precinct 4 |
| Evans Turpin | Iraan, City of |
| Houston McKenzie | At Large |

Member Absent: Alvaro Mandujano, Jr., Vanessa Cardwell and Janet Groth (NOTE: Janet came to the meeting from 11:59 AM to 12:50 PM.

Quorum Present.

Others Present: Paul Weatherby/General Manager, Mike Gershon and Shauna Fitzsimmons/MPGCD legal counsel, Melissa Mills, Frances Gomez/Pioneer, Harvey Gray, Paul Henderson, Billy Jackson, Frank Gonzales, Mary and Larry Lujan, Ricky Shuler, Snap Woodward, Skip Woodward, Lowell Woodward, Roy Martinez, Ralph Truszkowski, Nellie McDowell, Brock Thompson, Jeff Williams, Mike Thornhill, Ed McCarthy, Bruce Carpenter and Gary Bryant.

Public Hearing

I Call to Order at 10:07 AM

II Public hearing on **Billy Jackson Consolidated Application for Drilling and Production Permits**

Applicant: Billy Jackson. Sworn in by President Honaker. Mr. Jackson would like to put in a fresh water station 2 miles South of Fort Stockton adjacent to Highway 385 to sell water for oil and gas trucks. The application is for 10 acre feet per year for industrial use from the Edwards/Trinity aquifer. The term of the production permit is requested to be 25 years. Traffic will be routed to Highway 385. He is willing to put in sprinklers to keep the dust down. He doesn't want to hurt the aquifer and knows he may be asked to cut back on water production if necessary. Water production will be reported monthly by metered sales.

Protestants:

1. Paul Henderson. Once he was qualified as a protestant, he was sworn in by President Honaker. Questioned whether there would be monitor wells close.

Manager Weatherby said he would monitor wells that requested it provided the monitor equipment would go down in the well.

2. Mary Lujan. Mrs. Lujan qualified as a protestant and was sworn in by President Honaker. She has lived there since 1988 and hasn't had any problems with her well going dry, and doesn't feel that a water station in the Alamo Ranchettes area is a good idea. It would cause dust, noise and traffic in the residential area.
3. Ish Gonzales. Once he was qualified as a protestant, he was sworn in by President Honaker. He stated that he did see wells across the street from him pump off dry in the 1970's. The water has returned.

Board Comments:

1. The drilling permit term is 120 days and may be extended by the General Manager with good cause shown.
2. The permit term requested is 25 years. Mr. Jackson was asked if he would accept an annual renewable term. He answered yes.
3. Exempt wells are allowed approximately 28 acre feet per year, and the amount requested today is 10 acre feet.

Manager Paul Weatherby recommended that the Application be approved with amendments.

Houston McKenzie made a motion to approve the consolidated application for drilling and production permit with amendments. The drilling permit is for 120 days and may be extended by the General Manager. The production permit is approved for 10 acre feet per year from the Edwards/Trinity aquifer for industrial use, and the term of the permit is annually. The motion was seconded by Evans Turpin. Motion carried unanimously. Action to be ratified in the regular board meeting. (Note: A monitor well will be established near the water station.)

- III Adjourn. John Dorris made a motion to adjourn, seconded by Merrell Daggett. The motion carried, and the hearing adjourned at 11:09 AM.

I Call to Order at 11:09 AM

II Public hearing on **Ricky Shuler Application for Production Permit**

Applicant: Ricky Shuler. Sworn in by President Honaker. Mr. Shuler is requesting 30 acre feet per year for the 2 well system (#6A & 16) from the Edwards/Trinity aquifer for industrial use for a fresh water station to be located near the intersection of Highway 11 and 67. The well is already there and another is designated as a back up well if needed. He will be using a 5hp pump. There are 3 tanks set up. He verbally altered the application to include pumping water to a fish pond. He requests a 20 year permit term.

Board: President Honaker declared the application administratively incomplete because of the statements to pump water to the fish pond located in Crockett County which would be considered exporting water and requires a separate application.

Mr. Shuler said that a line has not been installed to the pond yet and wanted to withdraw that consideration, and have the application stand as presented for a fresh water station only.

President Honaker accepted the verbal adjustment, and declared the application administratively complete.

Protestants:

Lowell Woodward. He was qualified as a protestant and was sworn in by President Honaker. Mr. Woodward has land adjacent to the well(s) to be used for the water station. He is not against the right to develop. He is concerned with the water rights, and worried about over pumping and drying up wells in the surrounding area. He stated that AEP, the former well owner, needed to enlarge the water field to get proper water amounts for their operations. He also stated that water leases on the property may have expired.

MPGCD attorney Mike Gershon asked Mr. Woodward if he knew about restrictions on water rights or leases. He replied that he did not.

Board: Mr. Shuler was asked if MPGCD could have a monitor well nearby. Mr. Shuler replied yes. Mr. Shuler was informed that the water could not be used for pond water. Mr. Shuler had asked for a 20 year permit term – and the Board asked him if annually would work for him. Mr. Shuler replied yes. Mr. Shuler applied for 30 acre feet, and was asked if he would accept 10 acre feet annually. Mr. Shuler replied yes. Mr. Shuler was asked how he would be reporting usage. He replied by ticket sales on a monthly basis.

General Manager Paul Weatherby recommended the application be approved with the amendments.

Houston McKenzie made a motion to approve the application for a production permit with amendments. The production permit is approved for 10 acre feet per year from the Edwards/Trinity aquifer for industrial use, and the term of the permit is annually. The motion was seconded by Weldon Blackwelder. Motion carried. No objection.

Note: Mr. Shuler offered a monitor well on the property near the water station and Mr. Lowell Woodward offered a monitor well that is located across from the water station. MPGCD will monitor wells located near the water station.

III Adjourn. Ronnie Copper made a motion to adjourn, seconded by Merrell Daggett. The motion carried, and the hearing adjourned at 11:49 AM.

Recess called at 11:49 AM.

Reconvened at 11:57 AM

I Call to Order at 11:57 AM

II Public hearing on **Pecos County Fresh Water Supply Application for Drilling/Production Permit**

Applicant: Pecos County Fresh Water Supply was represented by Ralph Truskowski, a professional engineer with Parkhill Smith and Cooper, and Roy Martinez the manager for the Pecos County Fresh Water.

Ralph Truskowski was sworn in by President Honaker. Pecos County Fresh Water Supply is applying for a drilling permit and a 200 acre foot production permit from the Pecos Valley aquifer for Public Supply use. The new well will be named Well #4. Pecos County already has Historic and Existing use permits totaling 182 acre feet for the well system. Term is at the Board's discretion. The 200 acre feet is based upon well pumping capacity.

Well #1 is used for a monitor well and has been since 2007. Well #1 has a static level around 200'. There are concerns with Well #2 – it is the only well in operation. Well #3 is down. The new well is being drilled to meet the requirements of TCEQ for a public supply system.

Roy Martinez was sworn in by President Honaker. He stated that they would only run 1 well at a time because of the size of the pipe

Board: How much water is actually needed?

Ralph Truskowski: An increase to 250 acre feet per year for the well system should be sufficient.

Manager Paul Weatherby suggested to approve an increase of 68 acre feet for a system total of 250 acre feet. A term of 5 years on the production permit. The drilling permit is for 120 days and may be extended by the General Manager. Mr. Weatherby recommended that it be approved.

Ronnie Cooper made a motion to approve the consolidated application for drilling and production permit with amendments. The drilling permit is for 120 days and may be extended by the General Manager. The production permit is approved for 68 acre feet per year from the Pecos Valley aquifer for public supply use, and the term of the permit is 5 years. The new total for the well system is 250 acre feet. The motion was seconded by M. R. Gonzalez. Motion carried. Unanimously.

Note: Janet Groth came in at 11:59 AM and left at 12:50 PM.

III Adjourn. John Dorris made a motion to adjourn, seconded by Weldon Blackwelder. The motion carried, and the hearing adjourned at 12:50 PM.

The Board recessed at 12:50 PM for lunch.

Reconvened into open session for the public hearing on rule amendments @ 1:38 PM

I Call to Order at 1:38 PM by President Honaker

II Public hearing on **Rule Amendments**

The floor was given to Mike Gershon, MPGCD legal counsel.

Notice was timely filed according to Texas Water Code 36.101. Amendments were available on the website and at the District office for review 20 days prior to today's hearing. The notice reflects the three key issues to be considered for amendment.

Summary: The "Historic and Existing Use" permit rules that were in place approximately six years ago were struck from our rules as they were no longer needed. The deadline to file for a "Historic and Existing Use" permit (H&E permit) was 09-15-2005. An applicant alleges to have timely filed an application but it was never brought to the Board for a public hearing. To reinstate the rules necessary to process the application, we have "cut and pasted" the former rules into our current rules.

Secondly, our rules at the time reflected a deadline of August 1, 2005. The Board took action to extend the deadline to September 15, 2005. Action was never taken to amend our rules to reflect the new deadline. The practice and the action of the Board to extend the deadline was to allow applications to be filed up through September 15, 2005. Rule 11.4A reflects the September 15, 2005 deadline.

The third amendment relates to the implementation of the statutory requirements that require you to manage groundwater to avoid impairment of desired future conditions. To address development of 2010 baseline aquifer levels to implement the District's Management Zone rules, a deadline of September 18, 2012, is suggested.

Public Comments:

Mr. Ed McCarthy addressed the Board on behalf of Fort Stockton Holdings. He would like for the Board to not adopt any of the rule amendments. His points are summarized as follows:

1. Regarding changing the deadline of April 15, 2012, to the suggested deadline of September 15, 2012 in development of 2010 baseline aquifer levels to implement the District's Management Zone rules, Mr. McCarthy stated it would not change the fact that the deadline has past, or the fact that public hearings will be held and action contemplated. Today the deadline is suggested to be 09-18-2012.

2. Mr. Dan Percy clearly missed the established deadline of August 1, 2005, and has waited 7 years to bring it before the Board. The deadline of August 1, 2005 was clearly published and the notice posted. The deadline extension to September 15, 2005 was a change to the rule and was not properly published nor a proper notice posted, it was done through Board action and Mr. McCarthy asked the Board to consider whether or not it is lawful. Mr. Percy has the ability to make application for a production permit with the rules currently in place.

No further questions or comments.

- III Adjourn. Evans Turpin made a motion to adjourn, seconded by Merrell Daggett. The motion carried, and the hearing adjourned at 1:57 PM.

REGULAR BOARD MEETING

- I Call to Order at 1:58 PM by Board President Glenn Honaker.
- II Comments from **Public and Media (limit 5 minutes per person) None**
- III Consider and/or act upon **minutes of March 21, 2012**
Merrell Daggett made a motion to approve the March 21, 2012, minutes as presented. Seconded by John Dorris. Motion carried.

Agenda Item #VI considered next

- VI Consider and/or act **upon Billy Jackson Consolidated Application for Drilling and Production Permits**

Houston McKenzie made a motion to approve the consolidated application for drilling and production permit with amendments. The drilling permit is for 120 days and may be extended by the General Manager. The production permit is approved for 10 acre feet per year from the Edwards/Trinity aquifer for industrial use, and the term of the permit is annually. The motion was seconded by Ronnie Cooper. Motion carried unanimously. (Note: A monitor well will be established near the water station.)

Agenda Item #VII considered next

- VII Consider and/or act **upon Ricky Shuler Application for Production Permit**

Houston McKenzie made a motion to approve the application for a production permit with amendments. The production permit is approved for 10 acre feet per year from the Edwards/Trinity aquifer for industrial use, and the term of the permit is annually. The motion was seconded by Merrell Daggett. Motion carried. No objection. (Note: A monitor well will be established near the water station.)

Agenda Item #VIII considered next

VIII Consider and/or act **upon Pecos County Fresh Water Supply for Consolidated Application for Drilling/Production Permit**

Evans Turpin made a motion to approve the consolidated application for drilling and production permit with amendments. The drilling permit is for 120 days and may be extended by the General Manager. The production permit is approved for 68 acre feet per year from the Pecos Valley aquifer for public supply use, and the term of the permit is 5 years. The new total for the well system is 250 acre feet. The motion was seconded by John Dorris. Motion carried. Unanimously.

Agenda Item #IX considered next

IX Consider and/or act **upon Rule Amendments**

President Honaker called an executive session at 2:15 PM for the purposes authorized under the Texas Open Meetings Act, V.T.C.A., Government Code, Chapter 551.071 to consult with attorney.

President Honaker reconvened the open meeting at 3:03 PM and stated that no decisions were made in executive session.

The following amendments will be made to the rules:

RULE 11.4A HISTORIC AND EXISTING USE PERMITS

The District recognizes the validity of Historic and Existing Use Permits granted under the District's rules and will continue to recognize the rules and procedures applicable to a Historic and Existing Use permit existing at the time the permit was granted. *The District no longer accepts applications for Historic and Existing Use Permits because the deadline for filing Historic and Existing Use Permit applications was September 15, 2005.*

Historic and Existing Use Permits are subject to the transfer, renewal, and permit amendment provisions set forth in these rules. *The General Manager shall provide notice not less than thirty (30) calendar days prior to the date of a Historic and Existing Use Permit Application hearing. Notice shall be: (1) posted at a place convenient to the public in the District Office; (2) provided to the County Clerk of Pecos County whereupon the County Clerk shall post the notice on a bulletin board at the place convenient to the public in the county courthouse; and (3) provided to the applicant in written form.*

11.4B

(a) The well owner of any existing operational well not exempt under Rule 11.3 is eligible to and must file an application for Historic and Existing Use on a form provided by the District no later than September 15, 2005. Upon the applicant's presentation of evidence of beneficial use of groundwater during the Historic and Existing Use Period, the Board, after notice and hearing as provided for in this Section, shall take action to grant or deny the application, in full or in part, and issue a Historic and Existing Use Permit, if warranted.

(b) Prior to the District's decision on an application for Historic and Existing Use, the applicant is authorized to withdraw and put groundwater to beneficial use in an amount no greater than the Historic and Existing Use claimed or to be claimed in the application for Historic and Existing Use.

(c) Increased use beyond the permit allotment specified in a Historic and Existing Use Permit from an existing, permitted well requires the submission and grant of a Production Permit application.

(d) Historic and Existing Use Permit Applications:

(1) Application forms and payment of applicable fees: Each original application for a Historic and Existing Use Permit, a water well drilling permit, Production permit, and permit amendment requires the filing of a separate application, payment of the applicable fees, if any, and issuance of notice as provided for in this Section. Application forms will be provided by the District and furnished to the applicant upon request. All applications for a permit shall be in writing and sworn to, and shall include the following:

(i) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(ii) 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;

(iii) the location of each well and the estimated rate at which water will be withdrawn;

(iv) a declaration that the applicant will comply with the District's Rules and all groundwater use permits and plans promulgated pursuant to the District's Rules;

(v) a declaration that the applicant will comply with the district's management plan;

(vi) a declaration that the applicant will comply with all District well plugging and capping guidelines and report closure to the commission;

(vii) if groundwater is proposed to be transferred out of the District, the applicant shall describe the following issues and provide documents relevant to these issues:

(a) the availability of water in the District and in the proposed receiving area during the period for which the water supply is requested;

(b) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District; and

(c) how the proposed transfer is consistent with the approved regional water plan and certified district management plan.

(2) *Notice of filing of an application: The District must provide notice of filing of the application by publication in a newspaper of general circulation in the District; property owner notification by mail is not required.*

(i) All public notices covered by this section must include the following information on a form first approved by the District prior to issuance or publication:

(a) name and address of the applicant;

(b) date the application was filed;

(c) location and a description of the well that is the subject of the application; and

(d) a brief summary of the information in the application.

(ii) *Publication of the public notice of filing of application is required for the District to declare that the application is administratively complete.*

(e) In addition to the requirements in Rule 11.4B (d), all Historic and Existing Use Permit applications shall include the following:

(1) a statement of the quantity, nature, and purpose of the beneficial use during the single year of the maximum beneficial use during the Historic and Existing Use Period (Maximum Historic and Existing Use);

(2) a statement of the nature and purpose of the proposed use and the amount of water to be beneficially used for each purpose;

(3) the location of each well and the estimated rate at which water will be withdrawn; and

(4) Notwithstanding anything to the contrary in these rules, an applicant who owns land that was enrolled in the United States Department of Agriculture, Farm Service Agency, Conservation Reserve Program, pursuant to Title 7 of the Code of Federal Regulations, Part 1410, during each year in the Historic and Existing Use Period and that was irrigated during at least two of the five calendar years immediately prior to the calendar year of the effective date of the contract between the landowner and the United States Department of Agriculture/Commodity Credit Corporation for enrollment of such land in the United States Department of Agriculture, Farm Service

Agency, Conservation Reserve Program, may include those five calendar years immediately prior to the calendar year of the effective date of such contract in determining the applicant's Maximum Historic and Existing Use under these Rules.

(f) Protestants: A person desiring to protest an application for Historic and Existing Use shall file with the District a notice of protest no later than 15 days after newspaper notice of filing of the application, and shall serve the notice of protest on the applicant at the time of filing. The notice of protest shall set forth the protestant's justiciable interest and how that justiciable interest would be adversely affected by the permit proposed by the application. The Board may take testimony and shall deliberate and take official action at the hearing to determine whether the protestant has sufficiently demonstrated their justiciable interest and how that justiciable interest would be adversely affected by the permit proposed by the application. If the Board finds that a protestant does not adequately establish that its justiciable interest is affected by the proposed permit, then the protestant shall not be allowed to participate in the hearing.

(g) To the extent that there are any inconsistencies between this Section 11.4 and any other rules, Rule 11.4 controls.

Another amendment is on page 29. Rule 10.5 e3 – The date of April 15, 2012 will be changed to September 18, 2012.

Houston McKenzie made a motion to adopt the rule amendments as discussed. Seconded by John Dorris. Motion carried.

IV Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for 03-31-2012, 04-30-2012, 05-31-2012**

Weldon Blackwelder made a motion to approve the accounts payable, line item transfers and treasurer's report for 03-31-2012. Seconded by John Dorris. Motion carried.

Merrell Daggett made a motion to approve the accounts payable and treasurer's report for 04-30-2012. Seconded by Evans Turpin. Motion carried.

Merrell Daggett made a motion to approve the accounts payable and treasurer's report for 05-31-2012. Seconded by Weldon Blackwelder. Motion carried.

V Consider and/or act upon **General Manager's Quarterly Report**

Ronnie Cooper made a motion to accept the Managers Report as presented. Seconded by John Dorris. Motion carried unanimously.

Agenda Item #X considered next

X Setting a date for Budget Workshop

By way of an Executive Decision, President Glenn Honaker announced that on July 23rd a Special Meeting/Budget workshop will be called beginning at 9:30 AM at the MPGCD office and will recess to the 83rd JUDICIAL DISTRICT for a hearing, a Court non-jury civil docket beginning at 10:00 a.m., at the Pecos County Courthouse Annex, 400 South Nelson Street, Fort Stockton, Texas, 79735.

Once the hearing is adjourned, the Board will reconvene at the MPGCD office for a 2012/2013 Budget Workshop.

On July 24th the Regular Meeting and Public Hearing(s) will begin at 10 AM at the MPGCD office. This is the 4th Tuesday, as opposed to the normal meeting date which is the 3rd Tuesday.

A vote taken by a show of hands, was unanimous approval of the dates above.

XI Consider and/or act upon **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, ongoing Water Quality Analysis and U S Geological Survey study update, Legislative Update**

- Well Registrations: The Progress report Included in their notebook
- Drilling Permits: There are a few replacement wells being drilled.
- Data Loggers: Installing more data loggers.
- Water Quality Analysis: On going
- USGS Update: Included in their notebook
- Legislative: An update from Bob Turner is Included in their notebook

XII General Manager's report on incoming **Groundwater District-related Correspondence**

- A copy of the motion and proposed order filed with the District Clerk in the 83rd Judicial District
- Information regarding the TAGD Groundwater Summit in August
- Letter from the Matthies-Bennett 4-H Scholarship
- Information about a meeting with Applied Research Associates in reference to the explosion testing sites that are affecting Coyanosa

XIII Consider and/or act upon **Agenda for next meeting**

- Possible production permit hearing: Randy Braden, Mandujano Brothers, Ashton Farms, Perry Ranch
- Benchmark hearing
- Dan Percy/Pecos Pecan Farm Historic and Existing Use Hearing
- USGS Pecos County Study update presentation
- Select auditor for the fiscal year ending 09-30-2012

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XIV **Adjourn** Weldon Blackwelder made a motion to adjourn, seconded by John Dorris. The motion carried, and the meeting adjourned at 3:38 PM.

M. R. Gonzalez, Secretary/Treasurer

Glenn Honaker, President

Date Approved _____