

Middle Pecos Groundwater Conservation District Minutes of February 19, 2013

On this the 19th day of February, 2013, public hearings 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
Janet Groth	Precinct 1
Merrell Daggett	Precinct 2
Weldon Blackwelder	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4
Ronald Cooper	Precinct 4
Vanessa Cardwell	Fort Stockton, City of
Evans Turpin	Iraan, City of
Terry Whigham	At Large

Quorum Present.

Others present: Paul Weatherby, Allan Standen, Melissa Mills, Harvey Gray, Yaraniz Lujan, Craig Pearson, Rocky Rives, Randy Braden, Zach Brady, Ed McCarthy, Jeff Williams, Brock Thompson, Gary Drgac, , Alan Murphy, Raul Rodriguez, Stefan Schuster, Joe Shuster, Schuyler Wight, Bill Lannom, Joe Grimes, Rodger Bowers, Jerry McGuairt and Shawn Yorks.

REGULAR BOARD MEETING AGENDA

- I Call to order at 1:02 p.m. by President Glenn Honaker
- II Consider and act on letter of **resignation from Glenn Honaker**
Glenn Honaker presented a letter of resignation to the Board. Reason: Moving out of Precinct 1. Weldon Blackwelder made a motion to accept the resignation of Glenn Honaker, seconded by Alvaro Mandujano, Jr. Motion carried.

Note: At this time, Glenn Honaker joined the audience, and Vice President John Dorris lead the meeting.

- III Consider and act to **fill Board vacancy** in Precinct 1
Jerry McGuairt was present as a candidate for appointment to the open position for the Precinct 1 director. The term of the appointment will expire at the regular election for Directors in November 2014.

Merrell Daggett made a motion to appoint Jerry McGuairt to the position for Precinct 1 director; seconded by Evans Turpin; motion carried with one abstention.

Jerry McGuairt completed the *Statement of Officer*, and the *Oath of Office* was administered by John Dorris and notarized by Melissa Mills.

IV Consider and act on repealing and/or amending **District's bylaws**
Alvaro Mandujano, Jr. made a motion to table this agenda item until the next regular meeting. Seconded by Terry Whigham. Motion carried.

V Consider and act on **Board Officer positions** for 2013
Vanessa Cardwell made a motion to table this agenda item until the next regular meeting. Seconded by Merrell Daggett. Motion carried.

Note: Agenda Items are *Out of Sequence*. The minutes reflect the order in which they were addressed by the Board.

VII Presentation of **District auditor's report on financials for Fiscal Year 10-01-2011 through 09-30-2012 and act to approve auditor's report**

Rocky Rives with Smith and Rives, PC Certified Public Accountants presented the audit to the Board and answered all questions. The opinion rendered is the financial statements present fairly, in all material respects, the respective financial position of the governmental activities, the major fund, and the aggregate remaining fund information of the MPGCD, as of September 30, 2012, and the respective changes in financial position thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America. There are no findings that require disclosure or corrective action in the audit report. Mr. Rives recommended a depository contract be made with our bank.

Merrell Daggett made a motion to approve the Audit for Fiscal Year 10-01-2011 through 9-30-2012 as presented. Seconded by Weldon Blackwelder. Motion carried.

VI Consider and act upon **Randy Braden's Motion for Rehearing**

Mr. Braden requested a rehearing on the Board's decision issued on January 15, 2013, and requested reconsideration of the conditions imposed on the permit. Mr. Braden is represented by Zach Brady of Brady and Hamilton, LLP.

M. R. Gonzalez made a motion to grant the rehearing. Seconded by Alvaro Mandujano, Jr. Vote: Ayes: 9 Nays: 2 Motion carried.

VIII Recess from Regular Board Meeting to conduct public hearings
AT 1:35 PM the Board recessed from the regular meeting, and moved into the Public Hearings.

**POSSIBLE REHEARING ON PRODUCTION PERMIT APPLICATION
FILED BY RANDY BRADEN**

I Call to Order at 1:36 PM by John Dorris, Vice President

II Public Hearing on **Randy Braden's Production Permit Application**

Parties Representing Mr. Braden: Mr. Randy Braden and Mr. Zach Brady

Mr. Zach Brady, Randy Braden's lawyer, was given the floor. He was sworn in by John Dorris, Vice President.

Three issues with the conditions imposed on the permit on January 15, 2013.
Issue One: He is seeking relief from the permit condition requiring an Insta-Flow meter on each producing well prior to commencing irrigation in 2013. Mr. Braden currently has existing meters on his drip irrigation system to accurately measure the groundwater produced. He agrees to report his monthly usage to the District.
Issue Two: The permit condition that requires plugging of "Abandoned" wells. There are several older wells on the property. They are equipped with a pump, functional casing, and pump column. The wells are not deteriorated and not abandoned. Mr. Braden requests that the District allow these wells to be capped in accordance with TDLR standards when they are not in active use. The two wells are SW1 and SW2.

Issue Three: Mr. Braden requests the ability to produce 940 acre-feet for his crops, as he originally applied for. The Board decision granted 800 acre-feet on January 15, 2013.

Allan Standen, MPGCD hydrogeologist, stated that we would be unable to differentiate between the aquifers to determine which aquifer was being pumped from. Stratigraphy shows Pecos Valley and Edwards/Trinity dual aquifers in his location. The screened interval covers both aquifers and the waters comingle.

Other statements were made by: Randy Braden, Gary Drgac and Dr. David Pearson

- III Adjourn Janet Groth made a motion to adjourn the hearing. Seconded by Merrell Daggett. Motion carried and the hearing adjourned at 2:20 PM.

**SHOW CAUSE HEARING ON ALLEGED VIOLATION OF DISTRICT'S
RULES BY ACOSTA DRILLING**

- I Call to Order at 2:25 PM by John Dorris, Vice President
- II Show Cause Hearing on alleged violations of District's Rules by Acosta Drilling

Party representing Acosta Drilling: No one in attendance.

On January 16, 2013 Victor M. Acosta, Jr. with Acosta Drilling out of Lamesa, Texas was sent via Priority Mail of the U.S. Postal Service with Delivery Confirmation by Return Receipt Requested, a notice of alleged violation of the rules of the Middle Pecos Groundwater Conservation District. Note: The notice was returned to MPGCD unclaimed.

BASIS OF VIOLATION: The District has reason to believe that Acosta Drilling has drilled one or more wells without authority and without complying with drilling and reporting requirements of District Rules 11.1 and 13.1. The District has no record of receiving the required drilling approval form or the required well log report. If this information is correct, then Acosta Drilling is in violation of these rules. Rule 11.1(a) states that "no person may drill, operate, equip, complete, or alter the size of a well or well pump without first obtaining a permit (nonexempt wells) or approved pre-registration (exempt wells)." Rule 13.1(b) states that "the driller of any exempt or nonexempt well shall file with the District the well log required by Section 1901.251, Texas Occupations Code,

and, if available, the geophysical log and electric log." Acosta Drilling has failed to respond to informal requests by the District dated 11-30-2012, 12-11-2012, and 01-02-2013.

Paul Weatherby: The only response from Acosta Drilling was on 01-31-2013, and that is when we were sent two drilling reports on Randy Braden.

- III Adjourn Merrell Daggett made a motion to adjourn the hearing. Seconded by Ronald Cooper. Motion carried and the hearing adjourned at 2:35 PM.

HEARING ON PRODUCTION PERMIT APPLICATION FILED BY SCHUYLER WIGHT

- I Call to Order at 2:32 PM by John Dorris, Vice President

- II Public Hearing on **Schuyler Wight's Production Permit Application**

Mr. Schuyler Wight submitted an application for a production permit on 10/15/2012. He is requesting 999 acre feet annually from the Edwards/Trinity aquifer. The three wells are located on Survey T&PRR, Block 48, TSP 10, Section 21 N/2. The use is for irrigation on his farm.

Mr. Wight was present. There were no questions or comments from the public or the board.

- III Adjourn Ronald Cooper made a motion to adjourn the hearing. Seconded by Weldon Blackwelder. Motion carried and the hearing adjourned at 2:35 PM.

HEARING ON RESUBMITTED DRILLING PERMIT APPLICATION FILED BY CITY OF FORT STOCKTON

- I Call to Order at 2:36 PM by John Dorris, Vice President

- II Public Hearing on **City of Fort Stockton's Resubmitted Drilling Permit Application**

Party representing City of Fort Stockton: Raul Rodriguez & Stefan Schuster

Paul Weatherby: This is a resubmission of the original drilling application. The resubmission was received and posted on 02-08-2013. The bid package is unchanged.

Raul Rodriguez and Stefan Schuster were sworn in by John Dorris.

Question: Why so many changes?

Stefan Schuster: We have cooperation from Fort Stockton Holdings, and feel more secure hitting the aquifer in section 112, which is better for spending one million dollars to drill a test well. There is potential for a monitor well on Fort Stockton Holdings' section 111 right on the property line near the SE corner of 112.

- III Adjourn Vanessa Cardwell made a motion to adjourn the hearing. Seconded by Merrell Daggett. Motion carried and the hearing adjourned at 2:46 PM.

The Board recessed at 2:46 PM.

- IX Reconvene meeting at 3:02 PM.

Paul Weatherby introduced Shawn Yorks, he is new to the staff of the Fort Stockton Pioneer newspaper.

- XII Consider and act upon **Randy Braden's Permit Application**

After lengthy discussions, Vanessa Cardwell made a motion to grant the production for the original 940 acre feet as requested. We will monitor the 2 meters with monthly reporting with the existing meters. Wells SW1 and SW2 are to be plugged according to TDLR standards within 6 months, with a report to Paul Weatherby on the status of the plugging within 4 months. The motion was seconded by Merrell Daggett. Jerry McGuairt abstained. Motion carried.
Vote: 10 For, 1 Abstain

Note: Terry Whigham left the meeting at 3:47 PM.

XVI Consider and act upon **Schuyler Wight's Production Permit Application**
Evans Turpin made a motion to approve the production permit for 999 acre feet annually from the Edwards/Trinity aquifer. The three wells are located on Survey T&PRR, Block 48, TSP 10, Section 21 N/2. The use is for irrigation. Seconded by Merrell Daggett. Janet Groth and Jerry McGuairt abstained.
Vote: 8 For, 2 Abstain, 1 Absent. Motion carried.

XVII Consider and act upon **City of Fort Stockton's Drilling Permit Application**
Merrell Daggett made a motion to approve the drilling of the test well on section on 112 as originally presented. The permit granted on 01-19-2013 for section 71 is now void. Seconded by Alvaro Mandujano, Jr. Jerry McGuairt abstained.
Vote: 9 For, 1 Abstain, 1 Absent. Motion carried.

X Comments from **public and media** (limit 5 minutes per person) None

XV Consider and act on **alleged violations by Acosta Drilling**, and consider and act on appropriate penalty or other enforcement remedy to be imposed or pursued in court

Merrell Daggett made a motion to levy a \$5,000 fine for 2 violations with a 30 day time limit. Violation of District rule 11.1a. Seconded by Vanessa Cardwell.
Motion carried unanimously.

XIII **Executive/Closed Session** to address personnel matters and to consult with legal counsel

Vice President Dorris called an executive session at 4:09 PM for the purposes authorized under the Texas Open Meetings Act, V.T.C.A., Government Code, Chapter 551.071 to consult with attorney and Chapter 551.074 personnel matters.

Note: Alvaro Mandujano, Jr. left the meeting @ 5:00 PM. A quorum remained.

The meeting reconvened into open meeting at 5:05 PM and Mr. Dorris stated that no decisions were made in executive session

- XIV Consider and take action on **personnel and staffing matters discussed during Executive Session**
Tabled

- XI Consider and act on **Minutes of** December 18, 2012, and January 15, 2013

Merrell Daggett made a motion to approve the minutes of December 18, 2012.
Seconded by Weldon Blackwelder. Motion carried.

Merrell Daggett made a motion to approve the minutes of January 15, 2013.
Seconded by Janet Groth. Motion carried.

- XVIII Update on **developments with Groundwater Management Area 3** (recent meeting, future work and meetings)

Tabled

- XIX Consider and act on Texas Commission on Environmental Quality's work and report on **Priority Groundwater Management Areas**

Tabled.

- XX Review developments regarding potential formation of groundwater conservation districts or expansion of boundaries of existing groundwater conservation districts within Groundwater Management Areas 3 and 7

Tabled.

- XXI Discuss and review **US Fish and Wildlife Service's proposed rule regarding the listing of six west Texas aquatic invertebrate species as endangered species** and recent Federal Register notice and issuance of draft economic assessment

The U. S. Fish and Wildlife Service will have a public hearing on February 21, 2013, at the Balmorhea State Park in Toyahvale, Texas, to discuss a draft economic analysis for the proposed critical habitat for the Phantom Cave snail, Phantom springsnail, diminutive amphipod, Diamond Y Spring snail, Gonzales

springsnail and Pecos amphipod. The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the six west Texas invertebrates over the next 20 years.

MPGCD attorney Mike Gershon prepared a statement to be read into the record at the public hearing on February 21st. A summary of the comments:

- MPGCD opposes listing the Diamond Y Spring Snail, the Gonzales Spring Snail and the Pecos Amphipod.
- MPGCD points out that USFWS is uncertain and applies presumptions and assumptions in reaching its conclusions.
- MPGCD recognizes that USFWS relies heavily on Radu Boghici at TWDB. We believe that Radu can clarify his comments to USFWS and help us figure out the problem in a better way.
- MPGCD emphasizes that there is an “adequate regulatory mechanism” in place – our DFCs, and our Management Plan. Although they criticize the current DFCs and MP, they don’t criticize the process. We invite them to engage in our GMA process and MP hearings. So far, they have not done so. That process works, and MPGCD has a lot of authority over groundwater regulation.

MPGCD hydrogeologist Allan Standen has reviewed two thesis on the Diamond Y Springs and believes we can claim and present a case that the Rustler is not the only aquifer contributing to the Diamond Y Springs.

A representative of the MPGCD will go and submit the comments for the record.

XXII Consider and act upon **Accounts Payable and Treasurer’s Report and Line Item Transfers for the Months Ending 12-31-2012 and 01-31-2013**

Ronald Cooper made a motion to approve the accounts payable and treasurer’s report for 12-31-2012. Seconded by M. R. Gonzalez. Motion carried.

Janet Groth made a motion to approve the accounts payable and treasurer’s report for 01-31-2013. Seconded by Merrell Daggett. Motion carried.

XXIII Consider and act upon **Depository Contract with Pecos County State Bank and approve Directors on Signature Card**

Ronald Cooper motioned that MPGCD set policy and strategy to invest District funds in Demand Deposit accounts, Certificates of Deposit and other interest-

bearing bank accounts at Pecos County State Bank in compliance with the Public Funds Investment Act for the next 12 months.

No action on a director for the signature on the accounts.

XXIV Consider and act upon **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, ongoing Water Quality Analysis and Legislative Update**

Tabled

XXV **Consider and act upon General Manager's 2012 Annual Report**

Tabled

XXVI **General Manager's Correspondence and Report**

Tabled

XXVII **Directors' comments**

None

XXVIII Consider and/or act upon **agenda for next meeting**

- Executive session on personnel
- Acosta Drilling
- All of today's tabled items.

XXIX **Adjourn** Merrell Daggett made a motion to adjourn, seconded by Janet Groth. The motion carried, and the meeting adjourned at 5:29 PM.

Secretary/Treasurer

President

Date Approved _____