

Middle Pecos Groundwater Conservation District
Minutes of October 22, 2013

On this the 22nd day of October, 2013, public hearings and 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:

Jerry McGuairt	President, Precinct 1
John Dorris	Vice President, Precinct 3
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
Janet Groth	Precinct 1 (Arrived at 1 p.m.)
Merrell Daggett	Precinct 2
Weldon Blackwelder	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4
Terry Whigham	At Large

Quorum Present.

Members Absent: Vanessa Cardwell, Ronald Cooper, and Evans Turpin

Others present: Paul Weatherby, Mike Gershon, Harvey Gray, Gail Reeves, Gary Drgac, Randy Braden, Zach Brady, Ed McCarthy, Brock Thompson, Jeff Williams, Ernest Woodward, Todd Suter, Dan Percy and Joe Parras. Polly Taylor with the Fort Stockton Pioneer and Court Reporter Linder Lester.

**SHOW CAUSE HEARING ON ALLEGED VIOLATION OF DISTRICT'S
RULES BY RANDY BRADEN**

NOTE: This hearing was transcribed by Linder Lester. For a copy of the transcription please contact her directly at P. O. Box 2001 Pecos, TX 79772 or linda.courtreporter@gmail.com

- I Call to Order at 10:25 a.m.
- II Show Cause Hearing on alleged violations of District's Rules by Randy Braden
Party representing Applicant: Mr. Randy Braden and his lawyer
Mr. Zach Brady.

Other parties to the hearing: Paul Weatherby.

Randy Braden and Paul Weatherby were sworn in by President Jerry McGuairt.

Others were given the chance to be a party to the Show Cause Hearing, and there was no response.

The following has been incorporated by reference from all parties without objection: The Middle Pecos GCD digital recordings from January 15, 2013 to February 19, 2013, and September 17, 2013 and documents, exhibits and testimony that were provided at that time from all parties. The applications and associated documents in the file as of the date of the last rehearing are also part of the record.

Mr. Braden offered as Exhibit #1: 10-15-2013 Braden's Response to Notice of Violation.

Mr. Paul Weatherby made reference to the three violations that were in the Notice of Alleged Violations and Notice of Show Cause Hearing sent to Mr. Randy Braden:

DISTRICT RULE 9.2 pertaining to requirements for Pre-Registration (Notice of Intent to Drill) prior to drilling and Registration upon completion

DISTRICT RULES 11.1, 11.5, and 11.6 pertaining to requirements for Permit to Drill and Operate a well

DISTRICT RULE 15.5 pertaining to requirements for Plugging a Deteriorated or Abandoned Well.

Mr. Weatherby's recommendation: Reworking SW1, SW2 and SW3 within a given time frame of 90 days. Plugging wells 1, 2 and 5. Regarding well#4 - contamination is not the issue, the issue is it was drilled illegally and should be plugged. I recommend to levy a fine of \$15,000 for violating all the rules.

Zach Brady, Randy Braden's attorney, took the floor. Mr. Weatherby recommended what you can do, I would like to say what you should do. You should send a message to folks in the District that if they have a problem with a well, that they should come in and work through the problem without getting hammered by the District. I suggest that you do what is best for the aquifer which is to suspend those penalties until Mr. Braden does the remedial work to the wells.

Alvaro Mandujano, Jr. made a motion to go into executive session. Seconded by Weldon Blackwelder. Motion carried.

President McGuairt called for an Executive session for the purposes authorized under the Texas Open Meetings Act, V.T.C.A., Government Code, Chapter 551.071 to consult with attorney at 11:03 a.m.

The hearing was reconvened at 11:52 a.m. No action was taken during the executive session.

III Consider and act on **alleged violations by Randy Braden**, and consider and act on appropriate penalty or other enforcement remedy to be imposed or pursued in court

Board member Mr. John Dorris recused himself from the deliberation of action and votes on the enforcement matter regarding Mr. Randy Braden due to a conflict of interest. Mr. Dorris has personal wells that may be impacted by the wells that are at issue.

Weldon Blackwelder made a motion to memorialize and clarify Mr. Braden's commitments by ordering him to rework wells SW1, SW2, and SW3 in accordance with our rules and plug those wells to ensure there is no comingling or contamination of the Edwards Trinity aquifer. And, to plug wells 1, 2, and 5 to ensure there is no comingling or contamination of the Edwards Trinity aquifer. And, that all this work be completed within 90 days. And, that the General Manager has discretion to extend the deadlines for plugging if the General Manager believes there is good cause for extension. And, that we authorize the filing of a lawsuit in state court to enforce the decision if Mr. Braden does not timely comply to the satisfaction of the General Manager, which satisfaction must be communicated in writing.

A call for clarification by Mike Gershon that the satisfaction of the General Manager ensuring that there is no comingling or contamination of the waters with the Edwards Trinity aquifer on wells SW1, SW2, SW3, 1, 2, and 5 will be communicated in writing.

Motion seconded by Merrell Daggett.

Mr. Zach Brady requested clarification that *rework and plug SW1, SW2, and SW3* means to *rework, and if the rework does not work then to plug them?*

Mr. Blackwelder clarified the motion: ...to rework wells SW1, SW2, and SW3 in accordance with our rules and plug those wells if necessary to ensure there is no comingling or contamination...

Mr. Zach Brady: If necessary means if the rework is not successful?

Mr. Blackwelder: Yes

Mr. Merrell Daggett reaffirmed his second to the motion to include the clarification. The motion carried without objection.

Vote: 6 For. 0 Oppose. 4 Absent. 1 Recused/John Dorris

Merrell Daggett made a motion to impose a penalty of \$15,000 that Mr. Braden be required to remit to the District within 90 calendar days. And, that he remit to the District an additional \$500 per calendar day for every day beyond this 90-day period that he fails to comply with this decision or to plug wells timely.

Weldon Blackwelder seconded the motion. The motion carried without objection. Vote: 6 For. 0 Oppose. 4 Absent. 1 Recused/John Dorris.

- IV Adjourn The Show Cause Hearing on alleged violations of District's Rules was adjourned at 12:05 p.m. by President Jerry McGuairt.

The regular meeting was convened at 12:05 p.m. by President Jerry McGuairt.

NOTE: The following agenda item is being considered out of order.

- III Consider and/or act on **Randy Braden's Production Permit Application**

John Dorris made a motion to break for lunch. Motion died for lack of a second.

Alvaro Mandujano, Jr. made a motion to add SW1 and SW2 to the application. Motion died for a lack of a second.

John Dorris asked for clarification on whether or not he could vote on the item. Mr. Mike Gershon said it would be allowed if he did not have an issue with the quantity of water impacting his property. Mr. Dorris did not have issue. He will be allowed to vote on the agenda item.

Alvaro Mandujano, Jr. made a motion to grant 940 acre feet for wells SW3, #3 and #5. Motion seconded by Merrell Daggett. Motion carried.
Vote: Vote: 6 For. 1 Oppose. 4 Absent. 0 Recused 0 Abstain

Note: The application approved is for 940 acre feet from the Pecos Valley Alluvium and the Edwards/Trinity aquifers for agricultural irrigation use for wells #SW3, #3 and #5. The well system is located on Section 16, Block 12 of H&GN Ry. Co. Survey approximately 3 miles east of the Intersection of Hwy. 1901 and Hwy. 305 on South side of Highway 1901 in the Bakersfield area of Pecos County, Texas.

Merrell Daggett made a motion to break for lunch. Seconded by Weldon Blackwelder. Motion carried. The meeting was recessed for lunch at 12:15 p.m.

Note: Janet Groth arrived around 1 p.m. before the meeting/hearings reconvened.

HEARINGS AND BOARD ACTION ON PRODUCTION PERMIT APPLICATIONS

- I Call to order at 1:15 p.m. on Public Hearing on **Production Permit Application for Todd Suter on behalf of Wise H2O** by President Jerry McGuairt.

Party representing application: Todd Suter

Protestant to application: None

Public comment: None

Manager Paul Weatherby declared the application administratively complete and recommended that it be approved.

Todd Suter on behalf of Wise H2O has made application for a Production Permit for 1 (one) well located approximately 9 miles north of Hwy 285 on Hwy 1776 and 1/2 mile west in Section 24, Block 48-8 T & P Survey, Pecos County, Texas. The purpose of this water well is for Industrial Use and requests 30 acre feet/year from the Pecos Valley Aquifer.

II Adjoin hearing and consider and/or act on **Production Permit Application for Todd Suter on behalf of Wise H2O.**

Weldon Blackwelder made a motion to adjourn the public hearing. Motion seconded by John Dorris. Motion carried.

Weldon Blackwelder made a motion to approve the application for a production permit for one well for 30 acre feet/year from the Pecos Valley Aquifer for industrial use. Monthly water reports are required. Motion seconded by John Dorris. Motion carried.

I Call to order at 1:25 p.m. on Public Hearing on **Production Permit Application for Lee Baker**

Party representing application: None

Protestant to application: None

Public comment: None

Lee Baker has made application for a Production Permit for 1 well located approximately 3 1/2 miles west on Weatherby Rd. off Hwy 1776 in Pecos County, Texas. The purpose of this water well is for industrial use and requests 10 acre feet/year from the Pecos Valley Aquifer.

Manager Paul Weatherby declared the application administratively complete and recommended that it be approved.

II Adjourn hearing and consider and/or act on **Production Permit Application for Lee Baker**

John Dorris made a motion to adjourn the public hearing. Motion seconded by Weldon Blackwelder. Motion carried.

M. R. Gonzalez made a motion to approve the application for a production permit for 1 well located approximately 3 1/2 miles west on Weatherby Rd. off Hwy 1776 in Pecos County, Texas. The purpose of this water well is for industrial use for 10 acre feet/year from the Pecos Valley Aquifer. Monthly water reports are required. Merrell Daggett seconded the motion. Motion carried.

NOTE: The following agenda items are considered out of order.

I Call to order: The regular Board meeting was called to order at 1:33 p.m. by president Jerry McGuairt.

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

IV Consider and/or act on **Minutes of September 17, 2013**

Merrell Daggett made a motion to approve the minutes of September 17, 2013 as presented. Seconded by Weldon Blackwelder. Motion carried.

V Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending September 30, 2013**

Merrell Daggett made a motion to approve the accounts payable and Treasurer's Report and Line Item transfers for the month ending September 30, 2013. Motion Carried.

VIII Review Texas Commission on Environmental Quality's 2013 Priority Groundwater Management Areas and Groundwater Conservation Districts Report to the 83rd Legislature and consider action to address certain findings of the report

A summary of the rules changes to Chapter 35 and 36 that were made by the Texas Commission on Environmental Quality's was provided to Board Members. Senate Bill#692 pertains to water stations and they can now be assessed a production and export fee if a GCD so chooses.

House Bill#2859 created the Terrell County Groundwater Conservation District in Sanderson, Texas.

I Call to order at 1:45 p.m. on Public Hearing on **Production Permit Application for Joe Parras**

Party representing application: Joe Parras

Protestant to application: None

Public comment: None

Joe Parras has made application for a Production Permit for 1 well located approximately 3/4 mile East of Hwy 285 on North Service Road of I-10 in Ft. Stockton, Pecos County, Texas. The purpose of this water well is for industrial use and requests 10 acre feet/year from the Edwards/Trinity Aquifer.

Manager Paul Weatherby declared the application administratively complete and recommended that it be approved.

II Adjourn hearing and consider and/or act on **Production Permit Application for Joe Parras**

Merrell Daggett made a motion to adjourn the public hearing. Motion seconded by M. R. Gonzalez. Motion carried.

Weldon Blackwelder made a motion to approve the application for 1 well located approximately 3/4 mile East of Hwy 285 on North Service Road of I-10 in Ft. Stockton, Pecos County, Texas. The purpose of this water well is for industrial use and is for 10 acre feet/year from the Edwards/Trinity Aquifer. Motion seconded by M. R. Gonzalez. Motion carried.

VI Consider and/or take action to address **Pecos Pecan Farm's** ongoing groundwater production and allegedly pending Historic & Existing Use Production Permit Applications

Manager Weatherby addressed the Board as follows:

1. In September 2012 the MPGCD Board took action to require Pecos Pecan to file a standard production permit application or face enforcement actions.
2. Manager Weatherby and MPGCD legal counsel, Mike Gershon, recommend the Board allow Pecos Pecan to continue water production pending their submission of a production permit application within 90 days from this hearing date. This application will be reviewed in our February 2014 meeting or a *Notice of Violation* of our rules will be issued and a *Show Cause Hearing* will be in order.

No action taken.

- VII Consider and/or act to direct General Manager and District's professionals to prepare and set a hearing on **proposed rules that would amend and/or repeal certain District rules related to permitting, enforcement, and reporting**

Items to possibly be addressed:

- ✓ Issues related to production reporting and fracing
- ✓ Changes to "Notice of Enforcement and Show Cause Hearing"
- ✓ Possible change regarding exempt water being exported out of the District
- ✓ Address certain exempt well that need to report production and usage

No action taken. Proper notice will be filed when rules changes are ready to go before the Board.

- IX Consider and act upon **General Manager's Quarterly Report**

- ✓ Springs in Pecos County have little inflow. The rains in October increased the Pecos River and Independence Creek flows, but have leveled off. The Comanche Springs is not flowing.
- ✓ We are addressing compliance issues with the oil and gas industry
- ✓ There is a pending production permit application with a large solar company, and two others are looking at Pecos County.
- ✓ There is one new farm being established in the Girvin area.

Merrell Daggett made a motion to accept the General Manager's Quarterly report as presented. Seconded by Weldon Blackwelder. Motion carried.

- X Consider and/or act upon **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, ongoing Water Quality Analysis**

- ✓ Well Registrations: Ongoing process.
- ✓ Data Loggers: We have approximately 100 monitor wells currently. We are also setting up some new monitor wells.
- ✓ Water Quality Analysis: Continuing to gather samples.
- ✓ Production Permits: There are permits in progress.
- ✓ Palmer Drought Map: Map included in their notebook.
- ✓ The Texas Alliance of Groundwater Districts (TAGD) membership is up for renewal. Dues have increased to \$1,500 annually.
- ✓ A "proposal of work" for restroom and carport additions for \$75,000 is included for your review from Skyline Construction. Once a bid is settled on, Commissioners' Court can review the proposed additions to the building.

XI **Directors' comments**

- ✓ Weldon Blackwelder asked for clarification on Proposition 6 in the upcoming election. Mike Gershon explained briefly that it is about taking \$2 billion out of the state rainy day fund and using the funds for water projects that are identified in the State Water Plan.
- ✓ Janet Groth asked that the postage machine be checked for accuracy.

XII Consider and/or act upon **agenda for next meeting** None

XIII **Adjourn** Merrell Daggett made a motion to adjourn at 3:26 p.m. Seconded by Terry Whigham. Motion Carried.

M. R. Gonzalez, Secretary/Treasurer

Jerry McGuairt, President

Date Approved _____