

Middle Pecos Groundwater Conservation District  
Minutes of December 17, 2013

On this the 17th day of December, 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
Merrell Daggett	Precinct 2
Weldon Blackwelder	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4
Ronald Cooper	Precinct 4
Vanessa Cardwell	City of Fort Stockton
Terry Whigham	At Large

Quorum Present.

Member Absent: Evans Turpin

Others present: Paul Weatherby, Mike Gershon, Allan Standen, Harvey Gray, Gail Reeves, Ty Edwards, Melissa Mills, Brock Thompson, Darrell Peckham, Mark Tisdale, Gary Drgac, Tommy Ervin, John Lichtenberger, Schuyler Wight, Craig Pearson, Sarah Bird, Todd Suter, and Polly Taylor with the Fort Stockton Pioneer.

**REGULAR BOARD MEETING**

- I Call to order at 9:32 AM by Board President Jerry McGuairt.
- II Comments from **public and media** (limit 5 minutes per person)  
Members of the public may address the Board for a limited time concerning any subject whether or not it is on the agenda. The Board is not allowed to take action on any subject presented that is not on the agenda, nor is the Board required to provide a response.  
  
No comments from the public
- III Consider and/or act on **Minutes of October 22, 2013**  
Alvaro Mandujano, Jr. made a motion to approve the minutes of October 22, 2013 as presented. Seconded by Weldon Blackwelder. Motion carried.
- IV Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending October 31, 2013**  
Merrell Daggett made a motion to approve the accounts payable and Treasurer's Report for the month ending October 31, 2013. Seconded by Janet Groth. Motion Carried.

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

Alvaro Mandujano, Jr. made a motion to approve the accounts payable and Treasurer's Report and Line Item Transfers for the month ending November 30, 2013. Seconded by Vanessa Cardwell. Motion Carried.

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

- ✓ Ty Edwards was introduced as the Assistant General Manager
- ✓ Well Registrations: Ongoing process.
- ✓ Data Loggers: We are setting up some new monitor wells.
- ✓ Palmer Drought Map: Coyanosa is showing signs of the drought. The Nutt Ranch has frac activity ongoing and have offered us a monitor well. The concern is not the amount of water being used - it is the timing of the use. All parties are working together.
- ✓ Water Quality Analysis: Continuing to gather samples.
- ✓ Production Permits: There are permits in progress.
- ✓ The 2012 Texas Water Development Board's Draft Irrigation figures were presented to the Board.
- ✓ Herman Miller, a spelunker, went into Stephan's Well to record the water table in the Comanche Springs, and he replaced the transducer. He placed the transducer under 4 foot of water. Comanche Springs is not flowing.
- ✓ Mr. Weatherby informed the Board that he had received a note that the City of Fort Stockton is researching other water resource possibilities from oil and gas wells.
- ✓ Randy Braden's \$15,000 enforcement penalty was received on December 16, 2013.
- ✓ We have received two bids to build the bathrooms. Mr. Weatherby has been to Commissioners' Court for their review of the plans. He also asked them if there would be any financial contributions from Pecos County towards this construction project. The commissioners said they would let Mr. Weatherby know at their next meeting if funds would be available.

President McGuairt recessed the regular meeting at 10:05 AM.

## HEARING ON BARILLA SOLAR, LLC PRODUCTION PERMIT APPLICATION

- I Call to order at 10:05 AM by President McGuairt
- II Public Hearing

Party representing application: John Litchenberger with First Solar

Protestant to application: None

Public comment: None

Application request: 2 wells located approximately 28 miles west of Ft. Stockton on I-H 10 and approximately 1 1/2 miles northeast of Hovey Road in Pecos County, Texas. The purpose of this water is for Industrial Use and requests 150 acre feet/year from the Pecos Valley Aquifer.

Manager Paul Weatherby declared the application administratively complete and recommended that it be approved as amended from the Pecos Valley aquifer to the Edwards/Trinity as originally stated on the application, and there will be two points of withdrawal.

- III Adjourn hearing and consider and/or act on **Production Permit Application for Barilla Solar, LLC**

President Jerry McGuairt adjourned the public hearing at 10:20 AM.

Merrell Daggett made a motion to approve the application for a production permit for 2 wells located approximately 28 miles west of Ft. Stockton on I-H 10 and approximately 1 1/2 miles northeast of Hovey Road in Pecos County, Texas. The purpose of this water is for Industrial Use and is approved for 150 acre feet/year from the Edwards Trinity Aquifer. The motion was seconded by Terry Whigham. Motion carried without opposition.

- VII Consider and/or act upon litigation pursuant to Texas Water Code 36.102 and District Rule 15.3.6 against Dubose Drilling, Inc for failure to comply with District Rules 9.2, 11.1, 11.5, and 13.1.

The Board ordered Dubose Drilling, Inc. on September 17, 2013, to pay a \$5,000 penalty and to plug wells 2 and 4 on Mr. Randy Braden's property in Pecos County. Dubose Drilling, Inc. failed to comply with the deadline of January 16, 2014.

Mr. Bill Dubose, Jr. sent an email on December 16, 2013 to Mr. Weatherby saying *"I am sending a check in the amount of \$5,000 to cover the assessment against Dubose Drilling, Inc. The plugging and abandonment of Wells #2 and #4 will be completed by January 30, 2014."*

The Board was frustrated with the missed deadline. Action on this agenda item was tabled until after the hearing on the proposed rules.

Vanessa Cardwell made a motion to postpone action until after the rule hearing today. Seconded by Alvaro Mandujano, Jr. Motion carried.

VIII Consider and/or act upon **2014 Meeting and Holiday Schedule**

Merrell Daggett made a motion to approve the Holiday Schedule for 2014. The motion was seconded by Vanessa Cardwell. Motion carried.

John Dorris made a motion to approve the 2014 Meeting schedule. Seconded by Janet Groth. Motion carried.

The regular meeting was recessed at 10:50 AM.

**PUBLIC HEARING ON PROPOSED RULES**

I Call to order at 10:50 AM

II The Middle Pecos Groundwater Conservation District (District) will receive public input at a hearing on proposed amendments to the District's rules intended to address (1) pre-registration, registration and permitting requirements under Sections 9 and 11 of the District's rules, (2) integration of the Desired Future Conditions hearings and other requirements imposed on the District and interested stakeholders by Chapter 36 of the Texas Water Code, (3) hydrogeological report and associated permitting requirements, (4) application of the groundwater transfer criteria set forth in section 36.122(f), (5) establishment of a fourth management zone covering areas not currently within a management zone, (6) aggregation of withdrawal among multiple wells, (7) procedural adjustments to the notice and hearings process for enforcement due to rules violations, (8) development of baseline aquifer levels to further implement the District's Management Zone rules, and (9) reporting of groundwater production and use.

Written comments were received by Ed McCarthy on behalf of Fort Stockton Holdings, L.P.:

Overall, the proposed rules are confusing, apparently contradictory in some respects, and poorly written. They need substantial clarification and revision. As creatures of statute, all groundwater and special districts are limited to exercising those powers that have been expressly granted by the Legislature or powers necessarily applied pursuant to the express powers granted by the Legislature. Accordingly, the Middle Pecos Groundwater Conservation District must look to its enabling legislation and the applicable general laws as the source of and limitation upon its authority and power to operate, including the adoption of rules and rule amendments.

Mr. Mike Tisdale, General Counsel for Clayton Williams Energy, Inc. and Fort Stockton Holdings, was sworn in by Jerry McGuairt. Fort Stockton Holdings objective is to assure the adoption of equitable and defensible amendments to the District's Rules that provide for the sound and fair management of the groundwater resources beneath Pecos County in a uniform and nondiscriminatory manner that protects the sustainability of the resource while facilitating its maximum beneficial production and use. Fort Stockton Holdings believes some of the rules and amendments do not achieve these goals. The rules should be clear and easy to understand and without discrimination. The changes proposed for rule 11.9.2(f) will subject district to more criticism and does not reflect good science. We feel you should not take action today on the amendments and conduct public workshops.

Weldon Blackwelder made a motion to postpone the rule hearing. Motion seconded by John Dorris. The motion was not valid during the hearing and died on the floor.

Tommy Ervin of Odessa was sworn in by Jerry McGuairt. Mr. Ervin would like to harvest water that is not from a designated aquifer, and would like to propose that we add "waters from a free flowing aquifer" to our rules.

Mike Gershon, MPGCD legal counsel, told Mr. Ervin that MPGCD has jurisdiction over all groundwater in Pecos County.

Schuyler Wight was sworn in by Jerry McGuairt. The Santa Rosa springs have quit flowing earlier this Spring, there has been increased fracing and farming in Pecos County. He feels that changing the production permit requirement for a hydrogeological report from 1,000 acre feet to 10,000 acre feet would not be good.

- III Adjourn hearing and consider and/or act on proposed rules  
The Board recessed the hearing at 11:20 AM.

The following is taken out of agenda order:

**HEARING ON APRIL-BIRD TRAINER TRUST PRODUCTION PERMIT APPLICATION**

- I Call to order at 11:35 AM by President McGuairt  
II Public Hearing  
Party representing application: Sarah Bird on behalf of Richard Bird  
Protestant to application: None  
Public comment: None

Application request: 1 well located approximately 9 miles north of Hwy 285 on Hwy1776, and 3 miles east on Mobil Plant Road 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.

- III Adjourn hearing and consider and/or act on **Production Permit Application for April-Bird Trainer Trust**

President Jerry McGuairt adjourned the public hearing at 11:40 AM.

John Dorris made a motion to approve the application for a production permit for 1 well located approximately 9 miles north of Hwy 285 on Hwy1776, and 3 miles east on Mobil Plant Road in Pecos County, Texas. The purpose of this water well is for Industrial Use and is approved for 10 acre feet/year from the Pecos Valley Aquifer. The motion was seconded by Merrell Daggett. Motion carried without opposition.

Recess called for 5 minutes.

**HEARING ON JERRY KELLEY  
CONSOLIDATED DRILLING/PRODUCTION PERMIT APPLICATION**

- I Call to order at 11:42 AM by President Jerry McGuairt

II Public Hearing

Board member Mr. Alvaro Mandujano, Jr. recused himself from the deliberation of action and votes. The application implicates his company's ownership interests.

Party representing application: Todd Suter on behalf of Jerry Kelley.

Protestant to application: None

Public comment: None

Application request: 1 well located approximately 7 miles north of Hwy 285 and 3 1/2 miles west of Hwy 1776 in Pecos County, Texas. The purpose of this water well is for Agricultural Use and requests 550 acre feet/year from the Pecos Valley Aquifer.

Mr. Weatherby explained that the property had been farmed by Randy Taylor in the past. Todd Suter is currently leasing the land from Mr. Kelley and farms the land. Mr. Kelley has sent a letter giving Mr. Suter permission to act on his behalf for the production permit application.

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

III Adjourn hearing and consider and/or act on **Consolidated Drilling/Production Permit Application for Jerry Kelley**

Weldon Blackwelder made a motion to adjourn the hearing. Seconded by Vanessa Cardwell. Motion carried.

Terry Whigham made a motion to approve the application for 1 well located approximately 7 miles north of Hwy 285 and 3 1/2 miles west of Hwy 1776 in Pecos County, Texas. The purpose of this water well is for Agricultural Use and is approved for 550 acre feet/year from the Pecos Valley Aquifer. The motion was seconded by Merrell Daggett. Alvaro Mandujano, Jr. abstained. Motion carried without opposition.

**HEARING ON PRODUCTION PERMIT APPLICATION FOR MANDUJANO BROTHERS**

I Call to order at 11:50 AM by President Jerry McGuairt

II Public Hearing

Board member Mr. Alvaro Mandujano, Jr. recused himself from the deliberation of action and votes. The application implicates his company's ownership interests.

Party representing application: Alvaro Mandujano, Jr.

Protestant to application: None

Public comment: None

Application request: 3 wells located approximately 13 miles north of Hwy 285 and 1/2 mile west of Hwy 1776 on Tipton Rd. in Pecos County, Texas. The purpose of this well system is for Industrial Use and requests 50 acre feet/year from the Pecos Valley Aquifer.

III Adjourn hearing and consider and/or act on **Production Permit Application for Mandujano Brothers**

John Dorris made a motion to adjourn the hearing. Seconded by Weldon Blackwelder. Motion carried. Mr. Alvaro Mandujano, Jr. abstained.

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

Weldon Blackwelder made a motion to approve the application for 3 wells located approximately 13 miles north of Hwy 285 and 1/2 mile west of Hwy 1776 on Tipton Rd. in Pecos County, Texas. The purpose of this well system is for Industrial Use and is approved for 50 acre feet/year from the Pecos Valley Aquifer. Motion seconded by Terry Whigham. Alvaro Mandujano, Jr. abstained. Motion carried without opposition.

Board recessed at 11:56 AM Reconvened at 1:03 PM.

**PUBLIC HEARING ON PROPOSED RULES**

III Adjourn hearing and consider and/or act on proposed rules  
(The Board recessed the hearing at 11:20 AM.)

President Jerry McGuairt adjourned the public hearing at 1:04 PM.

Mike Gershon, MPGCD attorney, took the floor to explain the rule edits and said the edits are designed to clarify and use terminology consistent with language we and other groundwater conservation districts commonly use.



Rule 9.2 General Registration Policies and Procedures

9.2.1 and 9.2.2 wording changes regarding the *Notice of Intent* form

Rule 10.5 Management Zones

Disregard 10.5(a) discussions on Management Zone 4 are not valid.

10.5 (b) Change wording from *any* to *each* in the second sentence.

10.5 (e)10 New language added regarding benchmarks.

Rule 10.7 Measuring and Reporting Groundwater Withdrawals and Use

\* The words *and Use* were added to rule description.

10.7 (c)(2) Proposed language is being withdrawn. Will have language that reflects that we require the groundwater use data whether it comes from the owner or the operator.

10.7 (j) Addition of wording to assure that the District can secure monthly groundwater use data.

Rule 11.2 Aggregation of Withdrawal Among Multiple Wells

New language added considering application process for well systems.

Rule 11.5 Permits Required to Drill a New Well

(a) New language added considering Notice of Intent form and permit application.

Rule 11.9 Permit Applications

11.9.1(a)13A There was proposed language added for Board consideration that will be deleted.

11.9.2 (a)

11.9.2 (f)

(f) A hydrogeological report shall be attached to applications meeting the following conditions:

- (1) Requests to operate a nonexempt well or Well System with an annual maximum permitted use of at least **10,000** ~~4,000~~ acre feet; and
- (2) Requests to amend and increase by at least **1,000** ~~250~~ acre feet the annual maximum permitted use of a Production Permit for a well or Well System.

Note: The Board decided to discuss 11.9.2(f) further at another meeting, and this rule was not approved today. The Board wishes to have the rule remain at the 1,000 acre feet for a new production permit and 250 acre feet increases to a production permit as the trigger for a hydrogeological test requirement.

### 11.9.3 Hydrogeological Report Requirements

The previous rule is removed, and Allan Standen has rewritten the requirements. The new requirements are a combination of the old rule and new rule. The new requirements are written with the idea that the 11.9.2 (f) with 10,000 acre feet trigger for a hydrogeological report would be adopted. Allan Standen was asked to rework 11.9.3 with a framework of a 1,000 acre feet/or 250 acre feet increase trigger for a hydrogeological report. This rule was not approved today

### Section 15 Investigations and Enforcement

#### 15.3.2 Show Cause Hearing

A proposed change is from a 30 calendar day notice of a show cause hearing to each person, to a 10 calendar day notice.

15.3.4 An effort for the District to give notice to people that is fair and legal. It reflects the Boards frustration with certified mail that is delivered to an alleged violator and never picked up.

15.3.5 Removing the 15 day requirement wording, as it is not necessary

Merrell Daggett made a motion to accept the rules with the wording as indicated by the Board, and to table 11.9.2 (f) and 11.9.3. Motion seconded by Ronnie Cooper. Motion carried without opposition.

Reconsideration:

- VII Consider and/or act upon litigation pursuant to Texas Water Code 36.102 and District Rule 15.3.6 against Dubose Drilling, Inc for failure to comply with District Rules 9.2, 11.1, 11.5, and 13.1.

Ronnie Cooper made a motion to have our legal counsel send Dubose Drilling, Inc. a letter to inform them that our legal counsel will issue another *Notice of Enforcement Hearing* to address violation of the September 2013 enforcement order and to file an enforcement lawsuit if full compliance is not achieved by January 17, 2014. The *Enforcement Hearing* will consider additional penalties being imposed. Motion seconded by Merrell Daggett. Motion carried with opposition.

### X **Directors' comments**

Director Weldon Blackwelder asked Allan Standen if there was a way that MPGCD could participate with the University Lands study that is being conducted in the Eastern part of Pecos County.

Allan Standen said the University Lands study is being done on the Dockum Aquifer to evaluate how much water is available for fracing because they are selling water to the oil rigs. They do not need any financial resources for the study.

- XI Consider and/or act upon **agenda for next meeting**
- ✓ Commissioners' Court decision on construction of bathrooms
  - ✓ Dubose Drilling, Inc. Notice of Enforcement Hearing
  - ✓ Revised rule on hydrogeological requirements
  - ✓ Audit presentation
  - ✓ Possible production permits

- XII **Adjourn**  
The meeting was adjourned by President Jerry McGuairt at 2:33 PM.

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M. R. Gonzalez, Secretary/Treasurer

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Jerry McGuairt, President

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