

Middle Pecos Groundwater Conservation District
Minutes of October 21, 2014

On this the 21th day of October, 2014, a regular board meeting and public hearings were 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
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
John Dorris	Vice President, Precinct 3 (Left at 2:27 p.m.)
Merrell Daggett	Precinct 2 (Arrived at 11:36 a.m.)
Weldon Blackwelder	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4 (Left at 3:13 p.m.)
Ronald Cooper	Precinct 4
Vanessa Cardwell	City of Fort Stockton
Evans Turpin	City of Iraan
Terry Whigham	At Large

Quorum Present.

Board members absent: Janet Groth

Others present: Paul Weatherby, Mike Gershon, Gail Reeves, Ty Edwards, Harvey Gray, Melissa Mills, Jeffery McMahon, Bob and Carolyn Sadler, Doug May, Bob Hayter, Shirley Smetak, Berta Chandler, Debbie Lorenz, Barbara Kipgen, Brock Thompson, Jeff Williams, Ed McCarthy, Darrell Peckham, June Gray, James Cravens, Tommy Ervin, Don Burns, and Frank Rodasky/Fort Stockton Pioneer.

REGULAR BOARD MEETING

- I Call to order at 10:02 by 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.

None

- III Consider and/or act upon **Minutes of September 16, 2014**
Evans Turpin made a motion to accept the minutes of September 16, 2014.
Motion seconded by Alvaro Mandujano, Jr. Motion carried.

- IV Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending September 30, 2014**
Ronald Cooper made a motion to accept the Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending September 30, 2014, as presented. Motion seconded by Weldon Blackwelder. Motion carried.

- V Consider and/or act upon **General Manager's Quarterly Report**
Alvaro Mandujano, Jr. made a motion to table this item until the November meeting. Motion seconded by Evans Turpin. Motion carried.
- VI **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, ongoing Water Quality Analysis, Drought Map**
- Well Registrations: Ongoing progress.
 - Production Permits: Continuing interest in agricultural and Industrial permits.
 - Data Loggers: A few monitor wells have changed – due to owners installing a pump.
 - Water Quality Analysis: Next month we will have a map to present that will show total dissolved solids (TDS) levels and history on certain wells across the county.
 - The Texas Drought Report map was presented in the Quarterly Report.
- VII Consider and/or act upon **West Texas Solar 1, LLC Application for Tax Abatement**
June Gray, vice president of Macquarie Capital (USA) Inc., presented the West Texas Solar 1, LLC application to the Board of Directors.
- Solar power generation facility utilizing solar photovoltaic modules to generate electricity. The anticipated generation capacity of the project is 160 MW.
 - Phase 1 approximately 110 MW - construction to be completed in approximately mid 2016. The estimated value of proposed improvements is estimated to be \$275,000,000.
 - Phase 2 approximately 50 MW - construction to be completed in approximately late 2016. The estimated value of proposed improvements is estimated to be \$75,000,000.
 - The estimated taxes to be assessed for the 10-year abatement period are \$123,620. Estimation of amount of ad valorem property taxes to be paid to MPGCD after expiration of abatement for years 11 – 25 is \$262,500.
 - The required \$1,000 application fee is paid.
 - Mike Gershon, MPGCD legal, said the application is complete.
 - There will be minimal impact to the water table. About 38 acre feet of water will be needed during the construction phase, and about 1 acre foot thereafter. A well of John Harris, Jr. will be utilized and the well has a production permit.
 - Production life of proposed improvements is 25 – 35 years
 - The project is estimated to create hundreds of temporary jobs during the construction period and 2 permanent jobs during the operating period.

Alvaro Mandujano, Jr. made a motion to accept the application for the West Texas Solar 1, LLC tax abatement. Motion seconded by M. R. Gonzalez. Motion carried without opposition.

VIII Consider and/or act upon **West Texas Solar 1, LLC Tax Abatement Agreement**

Alvaro Mandujano, Jr. made a motion to approve the tax abatement agreement for the West Texas Solar 1, LLC. Motion seconded by Terry Whigham. Motion carried without opposition.

The regular meeting was recessed at 10:50 a.m.

PRODUCTION PERMIT HEARING for ROBERT SADLER AND CAROLYN LIGON SADLER FOR A 2 WELL SYSTEM AT 3341 IH-10 EAST in FORT STOCKTON

I Call to order at 10:50 a.m. on Public Hearing on **Production Permit Application for Robert Sadler and Carolyn Ligon Sadler for a 2 well system at 3341 IH-10 in Fort Stockton, TX**

Party representing application: Bob Sadler

Protestant to application: None

Public comment: None

Permit Request: 10 acre feet/year from the Edwards Trinity Aquifer for a 2 well system located at 3341 IH 10 East, Fort Stockton in Pecos County, Texas. The purpose of this well system is for Industrial Use.

Board member Alvaro Mandujano, Jr. recused himself from proceedings due to a conflict of interest. (Disclosure Affidavit signed)

Assistant Manager Ty Edwards presented the application to the Board. The application is declared administratively complete. The well is on 15 acres of property and proposed withdrawal to be from the Edwards/Trinity aquifer. He recommended the application be approved.

II Adjourn hearing and consider and/or act on **Production Permit Application for Robert Sadler and Carolyn Ligon Sadler for a 2 well system at 3341 IH-10 in Fort Stockton, TX**

Jerry McGuairt adjourned the hearing at 10:55 a.m.

Weldon Blackwelder made a motion to approve the application as presented. Motion seconded by Vanessa Cardwell. Motion carried.
Vote: 8 in Favor. 0 Oppose. 1 Recusal. 2 Absent.

**PRODUCTION PERMIT HEARING for ROBERT SADLER AND CAROLYN LIGON
SADLER FOR A WELL EAST of WARNOCK ROAD on NORTH SERVICE
ROAD OF IH-10 in FORT STOCKTON**

I Call to order at 10:58 a.m. on Public Hearing on **Production Permit Application for Robert Sadler and Carolyn Ligon Sadler for a well East of Warnock Road on North Service Road of IH-10 in Fort Stockton, TX**

Party representing application: Bob Sadler

Protestant to application: None

Public comment: None

Permit Request: 10 acre feet/year from the Edwards Trinity Aquifer for 1 well located approximately 1.5 miles East of Warnock Rd on the North service rd of Interstate 10 in Pecos County, Texas. The purpose of this well is for Industrial Use.

Board member Alvaro Mandujano, Jr. recused himself from proceedings due to a conflict of interest. (Disclosure Affidavit signed)

Assistant Manager Ty Edwards presented the application to the Board. The application is declared administratively complete. The well proposes to withdraw from the Edwards/Trinity aquifer. He recommended the application be approved. Stump McKenzie called and asked for a well to be monitored on the other side of the highway.

II Adjourn hearing and consider and/or act on **Production Permit Application for Robert Sadler and Carolyn Ligon Sadler for a well East of Warnock Road on North Service Road of IH-10 in Fort Stockton, TX**

Jerry McGuairt adjourned the hearing at 11:00 a.m.

Vanessa Cardwell made a motion to approve the application as presented. Motion seconded by Terry Whigham. Motion carried.
Vote: 8 in Favor. 0 Oppose. 1 Recusal. 2 Absent.

**CONSOLIDATED DRILLING AND PRODUCTION PERMIT HEARING for ROBERT
SADLER AND FRANK LIGON FOR A 2 WELL SYSTEM ON BLOCK 51-10,
SECTION 8 IN PECOS COUNTY, TX.**

- I Call to order at 11:01 a.m. on Public Hearing on **Consolidated Drilling and Production Permit Application for Robert Sadler and Frank Ligon for a 2 well system on Block 51-10, Section 8 in Pecos County, TX.**

Party representing application: Bob Sadler

Protestant to application: Bob Hayter gave sworn testimony

Public comment: Written comments submitted by Remme Ranches. They are not protesting the application. They oppose the permit and feel that water for use upon the land where the well is located is a different matter from water to be sold for use elsewhere when doing so causes such a risk of drawdown to the local area, and that industrial users should drill deeper wells and avoid use of the shallower aquifers.

Barbara Kipgen made a public comment saying that the Olympia Creek in Fort Davis is down, and that all this is not good for people.

Permit Request: 30 acre feet/year from the Edwards Trinity Aquifer. The 2 proposed wells are located on T&P RR Co Block 51-10 Section 8 in Pecos County, TX. The wells are projected to be 600 ft in depth, and drilled into the Edwards Trinity Aquifer. The purpose of the proposed wells is for Industrial Use.

Board member Alvaro Mandujano, Jr. recused himself from proceedings due to a conflict of interest. (Disclosure Affidavit signed)

Bob Hayter gave sworn testimony. Mr. Hayter has 25 wells in the area about one mile away that could be potentially be impacted negatively by the granting of this permit. He said the west end of the county is fragile and not a lot of water is available. He feels that oil and gas activity should drill deeper into the Rustler aquifer. He said COG drilled into the Edwards/Trinity aquifer and it drew his wells down which is documented in the MPGCD/TWDB monitor well on his place.

Applicant testimony, Bob Sadler. He wants to exercise his property rights and the right – of – capture and pump and sell water for beneficial use. He has owned the land since 1982.

When Mr. Sadler was asked if he would consider drilling into the Rustler Aquifer, he said he would be willing to consider it.

Merrell Daggett arrived at 11:36 a.m.

Paul Weatherby: There is not a monitor well in the vicinity that monitors the Rustler aquifer.

Bob Hayter was asked if he would protest the application if it was drilled to the Rustler aquifer, and he relied "Yes because these water stations are a possible detriment to farmers and ranchers.

The hearing was recessed at 11:48 a.m. for lunch.

An Executive Session was called at 12:56 p.m. by President Jerry McGuairt pursuant to the Texas Open Meetings Act, Sections 551.071 of the Texas Government Code, to consult with our attorney Mr. Mike Gershon.

Reconvene the hearing at 1:42 p.m. President McGuairt stated that no decisions or votes were made in executive session.

Bob Sadler asked the Board to take action today. When asked if he would be willing to accept a production permit with less acre feet – he said yes.

The Board requested to have the information that Mr. Hayter has about pumping in the area so they could review it, plus the information on the MPGCD monitor well in the area.

II Adjourn hearing and consider and/or act on **Consolidated Drilling and Production Permit Application for Robert Sadler and Frank Ligon for a 2 well system on Block 51-10, Section 8 in Pecos County, TX.**

Terry Whigham made a motion to continue the evidentiary hearing and to accept the protestant's evidence, and allow any additional evidence on November 18, 2014 at 10:30 a.m. at the MPGCD office. Motion seconded by Vanessa Cardwell. Vote: 8 in Favor. 1 Oppose. 1 Recusal. 1 Absent.

PRODUCTION PERMIT HEARING for ALVARO MANDUJANO, JR

I Call to order at 1:51 p.m. on Public Hearing on **Production Permit Application for Alvaro Mandujano, Jr. for 1 well on the East half of Block 49T8, Section 12 in Coyanosa, TX**

Party representing application: Alvaro Mandujano, Jr.

Protestant to application: None

Public comment: None

Permit Request: 10 acre feet/year from the Pecos Valley Aquifer and Edwards Trinity Aquifer for 1 well located on the East half of T&P RR Co Block 49T8 Section 12, in Pecos County, Texas. The purpose of this well is for Industrial Use.

Board member Alvaro Mandujano, Jr. recused himself from proceedings due to a conflict of interest. (Disclosure Affidavit signed)

Assistant Manager Ty Edwards presented the application to the Board. The property is 321 acres of land, and he owns the property solely. The application is declared administratively complete.

Alvaro Mandujano, Jr. stated that the water is for a frac tank, and this is the only well of his being utilized for the frac tank.

II Adjourn hearing and consider and/or act on **Production Permit Application for Alvaro Mandujano, Jr. for 1 well on the East half of Block 49T8, Section 12 in Coyanosa, TX**

Jerry McGuairt adjourned the hearing at 1:56 p.m.

Vanessa Cardwell made a motion to approve the application as presented. Motion seconded by M. R. Gonzalez. Motion carried.

Vote: 9 in Favor. 0 Oppose. 1 Recusal. 1 Absent.

PRODUCTION PERMIT HEARING for DEBBIE and CHARLES LORENZ

I Call to order at 1:58 p.m. on Public Hearing on **Production Permit Application for Debbie and Charles Lorenz.**

Party representing application: Debbie Lorenz

Protestant to application: None

Public comment: Rudolf Smetak sent in a letter stating he is not in favor of this water station in this area where he has property.

4 others, Billy Moody-Mrs. Glover-Scott Pool-Charlie & Sixy Davis, voiced the same concerns with phone calls. Arlie Weatherman came to the office to register his concerns about the water station being in the area. Shirley Smetak and Berta Chandler attended the meeting and voiced their concern because their wells have had pumping trouble lately and do not want this operation to jeopardize their water wells and are not in favor of this water station in this area where they have property.

Permit Request: 15 acre feet/year from the Edwards Trinity Aquifer for 1 well located at 5432 North Hwy 18, Ft. Stockton, Texas. The purpose of this water well is for Industrial Use.

Assistant Manager Ty Edwards presented the application to the Board. The property has an "Historic and Existing Use" production permit to pump 140 acre feet annually for irrigation use, and the Lorenz's own the property. The property is approximately 77 acres. The application is declared administratively complete.

MPGCD will install a monitor well in the area. More permits are coming in for this area.

Debbie Lorenz gave sworn testimony that the water station has been in operation for a period of time. They have sold 19 loads of water from July 2014 to today. They have a production permit and they were not aware they needed to get permission to change the use of the permit. The land has not been farmed since 1998. The water station is to supplement the lull in their agricultural operations. They do not want to have a harmful effect on any of the neighboring properties and pointed out they have permission to pump 140 acre feet annually and do not understand why the 15 acre feet requested is a concern.

Mrs. Lorenz was asked if she would consider a reduced amount of production being granted, she replied yes, and understood if they need more production added to the permitted amount that they could come back to MPGCD and make the request.

II Adjourn hearing and consider and/or act on **Production Permit Application for Debbie and Charles Lorenz**

Jerry McGuairt adjourned the hearing at 2:21 p.m.

Merrell Daggett made a motion to approve the application for 10 acre feet (not 15 acre feet) for industrial use. Motion seconded by Vanessa Cardwell. Motion carried. Vote: 10 in Favor. 0 Oppose. 1 Absent.

PUBLIC HEARING AND BOARD ACTION ON PROPOSED RULES

I Call to order at 2:23 p.m.

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 permit renewals and appropriate circumstances and procedures for partial or full permit cancellation; permit application requirements; permit conditions; aquifer level baselines for purposes of analysis of Desired Future Conditions; standards, definitions and enforcement mechanisms to prevent the degradation of water quality; and procedures and authority to process requests for ad valorem tax abatements.

Board member John Dorris left the meeting at 2:27 p.m.
A quorum of 9 directors remained.

Manager Paul Weatherby reviewed the proposed changes (Shown in Red). He added that the proposed changes to the permit renewal process do not apply to Historic and Existing Use permits:

RULE 11.8 PERMIT RENEWAL

- (a) Permit Renewal: Renewal applications shall be provided by the District prior to expiration of the permit term, and shall be filed with the District no later than January 15th of the new year for which the permit renewal is requested. Production Permits will not be renewed unless the well has been drilled at the time of the renewal application. **On the third annual anniversary of permit renewal and every subsequent annual anniversary of permit renewal, a Production Permit Holder must demonstrate that the water allocated by the permit has been withdrawn and put to beneficial use for the purpose and in the amount described in the permit.** The General Manager may rule on any renewal application that seeks renewal with the identical **or more restrictive** permit **terms and** conditions in the existing permit without notice, hearing, or further action by the Board, or with such notice and hearing as the General Manager deems practical and necessary under the circumstances. System water loss shall be reported to the District once annually, at the time of submitting documentation in support of annual permit renewal.
- (b) Basis for Renewal: While there is no automatic right of renewal, an application for renewal will be **fully** approved if the General Manager or Board finds that the **applicant demonstrated that the water allocated has been withdrawn and put to beneficial use for the purpose and in the amount described in the permit during the most recent calendar year of the initial three years of the permit term and that the** applicant's continued use of groundwater will remain in compliance with the terms, provisions, and requirements of the applicant's current permit and the District Act and rules, subject to adjustment by the General Manger or Board for any new production limits or proportional adjustment requirements that may be applicable to the renewed permit.
- (c) Basis for Denial: The General Manager or Board may **partially or fully** deny a renewal application only on grounds that the applicant is in violation of the District's rules, the District Act, or Chapter 36, Texas Water Code; **that the applicant has not demonstrated that the water allocated has been withdrawn and put to beneficial use for the purpose and in the amount described in the permit during at least one calendar year of the initial three years of the permit term;**, or that the applicant has a previous violation on record with the District, which has become a final order of the District's Board and is no longer subject to a motion for rehearing before the District, that has not been corrected or overturned by a court, including, but not limited to, being current on payment of all fees to the District. The District has the burden of proof regarding establishment of any such

violation. This subsection shall not be interpreted in a manner that creates a standard in connection with the renewal of a permit that would preclude the District from lawfully revoking a permit for violation of the permit terms, the District's rules or Act, or Chapter 36, Texas Water Code. **The applicant has the burden of proof to demonstrate that the water allocated has been withdrawn and put to beneficial use for the purpose and in the amount described in the permit. During renewal, the General Manager or Board may partially or fully reduce the permit allocation to an amount that the permit holder has demonstrated has been withdrawn and put to beneficial use as described above in this rule.**

RULE 11.9 PERMIT APPLICATIONS

RULE 11.9.1 Requirements for All Permit Applications:

- (a) **(13) a written statement addressing each of the applicable criteria in Rules 10.2 and 11.10.10(a), (b) and (c) and substantiating why the applicant believes the Board should consider each of these applicable criteria in a manner favorable to the applicant; and**

RULE 14.3 POLLUTION OR DEGRADATION OF QUALITY OF GROUNDWATER

- (a) No person shall **cause pollution** or harmfully alter the character of the underground water of the District by means of salt water or other deleterious matter admitted from another stratum or strata or from the surface of the ground, or from the operation of a well.
- (b) No person shall **cause pollution** or harmfully alter the character of the underground water of the District by activities on the surface of the ground which cause or allow pollutants to enter the groundwater through recharge features, whether natural or manmade.
- (c) **No person shall cause degradation of the quality of groundwater.**

RULE 14.4 ORDERS TO PREVENT WASTE/, POLLUTION OR DEGRADATION OF QUALITY OF GROUNDWATER

After providing 15 (fifteen) calendar days notice to affected parties and an opportunity for a hearing, the Board may adopt orders to prohibit or prevent waste, ~~or~~ **pollution, or degradation of the quality of groundwater.** If the factual basis for the order is disputed, the Board shall direct that an evidentiary hearing be conducted prior to consideration and decision on the entry of such an order. If the Board President or his or her designee determines that an emergency exists requiring the immediate entry of an order to prohibit waste or pollution and

protect the public health, safety, and welfare, he or she may enter a temporary order without notice and hearing provided, however, the temporary order shall continue in effect for the lesser of 15 (fifteen) calendar days or until a hearing can be conducted. In such an emergency, the Board President or his or her designee is also authorized, without notice or hearing to pursue a temporary restraining order, injunctive, and other appropriate relief in a court of competent jurisdiction.

Board member Alvaro Mandujano, Jr. left the meeting at 3:13 p.m.
A quorum of 8 directors remained.

Public Comment: Ed McCarthy, on behalf of Fort Stockton Holdings, provided written and oral comments and discussed reasons why and encouraged the Board to not adopt the proposed amendments to rules 11.8, 11.9.1(13), 14.3 and 14.4.

III Adjourn hearing and consider and/or act on proposed rules

Jerry McGuairt adjourned the hearing at 3:23 p.m.

Evans Turpin made a motion to accept the rules as presented with edits to 11.8.(b) as follows: Basis for Renewal: While there is no automatic right of renewal, an application for renewal will be fully approved if the General Manager or Board finds that the applicant's continued use of groundwater will remain in compliance with the terms, provisions, and requirements of the General Manager or Board for any new production limits or proportional adjustment requirements that may be applicable to the renewed permit, and, additionally with respect to production permits, that the applicant demonstrated that the water allocated has been withdrawn and put to beneficial use for the purpose and in the amount described in the permit during at least one calendar year of the initial three years of the permit term. Rules are to be effective today.

Motion was seconded by Vanessa Cardwell. Motion carried.
Vote: 8 in Favor. 0 Oppose. 3 Absent.

REGULAR BOARD MEETING CONTINUED

IX Consider and/or act upon **General Manager's Correspondence and Report**

- MPGCD has entered into an agreement with William (Bill) Hutchison to fulfill our obligation to join with other Groundwater Management Area 7 groundwater conservation districts to participate in joint planning for the purpose of adopting Desired Future Conditions (DFC's) for the aquifers located within its boundaries.

- Texas Alliance of Groundwater Districts letter regarding 14/15 TAGD membership. Also, we will utilize TAGD for tracking legislative matters instead of Ty Embry, because tracking and bill summaries are included in our membership.
- 3rd Lone Star Water Summit: December 9-12, 2014 in Austin, TX: Paul will be attending as a member of a panel on *Current and Long-Term Water Supply and Needs for Texas*
- Listing of top 15 taxpayers in our District.
- Article on *Groundwater officials gather to Discuss Management* that reflects on the GMA 7 meeting on September 18, 2014 in San Angelo.
- Article titled *U. S. House moves to block EPA water rule*. The Board is concerned about this regulations to classify every drop of water above and below ground to be regulated by the EPA – could include “low spots in a farmer’s field” or mud puddles, ditches and places that are only wet when it rains for example. The Board gave Mr. Weatherby the authority to comment on their behalf about their opposition to this rule.
- A tax abatement from East Pecos Solar, LLC came through Pecos County Commissioners Court and may be on our next agenda.

X **Directors’ comments** No comments

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

- General Managers’ Quarterly report
- Possible EPA water rule resolution
- Water analysis map showing the total dissolved solids in Pecos County Wells
- Bob Sadler’s continued permit hearing on Block 51-10, Section 8
- Several other production/drilling permit applications
- PPC hearing (Plantation Petroleum) pertaining to our rule 14.4.

XII **Adjourn**

Merrell Daggett made a motion to adjourn the meeting at 3:43 p.m. Motion seconded by Weldon Blackwelder. Motion carried unanimously.

M. R. Gonzalez, Secretary/Treasurer

Jerry McGuairt, President

Date Approved _____