

Middle Pecos Groundwater Conservation District
Minutes of April 19, 2016

On this the 19th of April, 2016, 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
John Dorris	Vice President, Precinct 3
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
Weldon Blackwelder	Precinct 3
Ronald Cooper	Precinct 4
Vanessa Cardwell	City of Fort Stockton
Terry Whigham	At Large

Quorum Present.

Board members absent: Jeffery McMahon, Janet Groth, Merrell Daggett and Alvaro Mandujano, Jr.

Others present: Paul Weatherby, Mike Gershon, Gail Reeves, Ty Edwards, Harvey Gray, Melissa Mills, Jeff Williams, Brock Thompson, Ed McCarthy, III., Ed McCarthy II, Tommy Ervin, Chance Murphy, Mark A. Harral, Chris Alexander, Billy Jackson, Frank Rodriguez, Ruben Falcon, Raul Rodriguez, Gerald D. Lyda, Michael McCulloch, Steve and Bertha Chapman, Rick Dudman, Gary Harrell, Mark Osborn, Marty Jones, Bob Harden, Greg Neal, Jimmy Perkins, Scott Courtney, Mike Thornhill, Corey Paul, Santiago Cantu, Elise Sibley Chandler, James Cravens, Ernest Woodward, Doug May, Paula McGuairt, Gladys Dorris and Bob Beal/Fort Stockton Pioneer.

NOTE: Items were taken up in an order other than the posted agenda.

REGULAR BOARD MEETING

I Call to order regular Board meeting at 10:00 a.m. by President Jerry McGuairt.

II Comments from public and media: No comments from the public.

Greg Neal with Republic Water Company of Texas, LLC requested clarification on agenda items VI and VII. President McGuairt explained that each item will be explained as it is considered.

Recessed Open Meeting.

VI Consider and/or act on matters related to determination of administrative completeness of permit applications, including but not limited to **Republic Water Company of Texas, LLC's pending permit application.**

Mike Gershon, MPGCD's legal counsel, presented a recap of the application's current status as it being processed by the General Manager. On March 22, 2016, following the Texas Water Development Board's presentation of the Capitan Reef Aquifer model, the MPGCD General Manager and Assistant General Manager met with the Republic Water Company of Texas's team at the MPGCD office to discuss the General Manager's written request for information and questions and concerns from both entities. Republic Water Company resubmitted a replacement superseded application with intent to address the General Manager's concerns and requests for additional information. As of today, the application is not administratively complete. Republic Water Company has advised that they are working with USGS on modeling issues to complete the model due as part of the application.

An Executive Session was called at 10:07 a.m. by President Jerry McGuairt pursuant to the Texas Open Meetings Act, Sections 551.071 of the Texas Government Code, to consult with attorney.

Executive session ended at 10:38 a.m. The Board reconvened into open session at 10:44 a.m. President McGuairt stated that no decisions or votes were made in executive session.

No action on agenda item VI.

- VII Consider and/or act to **address matters related to Republic Water Company of Texas, LLC's pending permit application**, including but not limited to whether to set a hearing on, abate, dismiss, and/or take other action on the application.

Vanessa Cardwell moved to abate further processing and consideration of Republic's application until the conclusion of the pending administrative appeal by Fort Stockton Holdings, L.P. (FSH).

Motion seconded by John Dorris.

Vanessa Cardwell stated: "I want to be clear about the purpose of my motion. The District is in the middle of an appeal that involves the same wells, property, water rights and historic use permits linked to Republic's application. I do not see how we, as a Board, can continue processing an application that conflicts with the FSH appeal."

"Plus, Republic has made a proposal regarding linkage with FSH's historic use permits that we have already addressed in the FSH hearing. And, the District Court agreed with our denial of that application. After discussing these issues with our legal counsel, I believe that abatement is best for now, though we may in the future consider dismissal of the application because of *collateral estoppel* and *res judicata*."

Board President Jerry McGuairt offered Republic Water of Texas, LLC (Republic) 20 minutes before the Board continued its deliberation and then voted.

Mr. Marty Jones, attorney for Republic made the following statement: He did not see anything in the District rules to indicate that administrative completeness of an application is dependent on the existence or nonexistence of litigation. We are not a party to the Fort Stockton Holdings, LP (FSH) litigation. With respect to the Historic and Existing Use permits (H&E), we have made it abundantly clear that a commitment has been made to Republic that Mr. Williams, Fort Stockton Holdings, LP, and Clayton Williams Farms have agreed with us that if the Board grants our permit, as we have applied for and after the conditions are met, then we will be able to retire the H&E permits up to 28,000 acre feet and turn those into regular production permits, and FSH will dismiss its pending lawsuit.

Republic believes the administrative completeness is a review that should be done by the General Manager. Republic asks that the Board make that determination and we ask for a referral to the State Office of Administrative Hearings (SOAH) to the extent that the SOAH hearing might be available to us at any time during the process.

Abating the permit is not the right path for this Board, and what you will be doing is trading one lawsuit for more.

The Board President offered other parties an opportunity to comment on the motion to abate.

Mr. Ed McCarthy, Jr., attorney for Fort Stockton Holdings and Clayton Williams Farms, made the following statement: I believe that Mr. Jones has accurately represented to the Board the position of Fort Stockton Holdings with respect to this matter. The fact that the District Court's judgment affirmed MPGCD's denial of the permit application filed by FSH means there is no other FSH permit application before this District. The motion belies the fact that the Board is considering information in evidence which has not been presented to it in a courtroom setting or hearing in which Republic has had the opportunity to present evidence on the same.

Mr. Mark Osborn, attorney for Pecos County, Pecos County WCID No. 1, City of Fort Stockton and Brewster County Groundwater Conservation, stated that the Republic application and FSHLP applications are linked and that his clients agree with the abatement of the Republic application.

Mr. Mark Harral announced that he also represented the City of Fort Stockton, then discussed the matter with multiple Council Members in attendance, and then advised that the City is not going to weigh in on the Republic application.

When Republic representative Jimmy Perkins asked whom Mr. Osborn consulted regarding his clients' position on Republic, Mr. Osborn advised that he consulted all of his clients and that the City must have just changed their mind.

The Board then deliberated and voted 7-0 in favor of the motion (4 absent).

PRODUCTION PERMIT HEARING for City of Fort Stockton

Call to order at 10:58 a.m. the Public Hearing on **Production Permit for City of Fort Stockton.**

Applicant's representatives: Mark Harral, City of Fort Stockton attorney
Raul Rodriguez, Fort Stockton City Manager

Protestant to application: None

Public Comment: None

No hearing registration forms submitted.

Assistant General Manager Ty Edwards presented the application to the Board.

City of Fort Stockton has made application for a Production Permit for a 2 well system located at 509 N. Valentine, Fort Stockton, in Pecos County, Texas. The purpose of this well system is for Industrial Use (30 ac/ft) and Public Supply Use (960 ac/ft). The City requests a total of 990 acre feet/year from the Edwards Trinity Aquifer. Raul Rodriguez, Fort Stockton City Manager, is the City's designated representative on the application. "Historic and Existing Use" permits failed to be applied for in 2005. We monitor one of the wells in the building. The wells are used for emergency use. The application is administratively complete.

Mark Harral, City of Fort Stockton attorney, presented a PowerPoint presentation to the Board. Highlights from the presentation:

- Relied on wells in permit application since 1930's
- Belding well field since 1960's
- Existing pipeline installed 1960's
- Purchased Stockton Farms and Blue Ridge Farms as secondary well field locations early 1990's
- City built a water station before 1960's to provide water to construction and oil and gas industries
- City registered 36 wells, and only 4 Belding wells applied for Historic and Existing Use permits for municipal use, and were granted 8,081 acre feet
- City park wells have their own Historic and Existing Use permits
- Production permit application today asks for 30 acre feet for industrial use, and 960 acre feet for municipal for a 3 month emergency use time period.

- City population is growing between 9.66% to 7.55% based on annual sales tax revenue; and water usage is increasing between 2.73% to 3.25% a year based on historical data

Mr. Harral said the City of Fort Stockton is looking at their other wells, and they are planning on submitting additional production permits within the next two or three months. This will most likely be over 1,000 acre feet and require a hydrogeological test.

The Directors asked Mr. Harral several questions regarding whether there really was an emergency need for more water, City demand projections, and the option of producing from the two wells at issue under the umbrella of the previously issued historic and existing use permits.

Director Cardwell asked the General Manager what his recommendation was. In response, General Manager Paul Weatherby advised that there are options. First, the Board could grant the regular permit for 960 of municipal use plus 30 for the industrial portion of the permit. Alternatively, the City could add the 2 wells into their current distribution system and combine the wells with existing permits.

On behalf of the City of Fort Stockton, Mark Harral requested a SOAH hearing on grounds that it does not appear to him that a majority of the Board supports granting the application and it appears that management does not recommend that the application be moved forward as is.

An Executive Session was called at 11:47 a.m. by Presiding Officer Jerry McGuair pursuant to the Texas Open Meetings Act, Sections 551.071 of the Texas Government Code, to consult with attorney.

The Executive Session ended at 12:07 p.m., and a lunch break was taken. The Board reconvened into open session at 1:01 p.m. President McGuair stated that no decisions or votes were made in executive session.

General Manager Paul Weatherby was asked to clarify his recommendation. Quote: *"My position is the two options that I presented to y'all. Pro and con: The production permit could be issued for the amount requested. Or, you could choose to add the two wells to the current permits that they have."*

Presiding Officer McGuair and District legal counsel recognize that the Presiding Officer had determined the application to be uncontested at the beginning of the hearing, and that it does not appear that the General Manager was indicating any interest in protesting the application. The Presiding Officer announced: "Yes, it is uncontested. No one had when we first started, no one had put anything in to be a party to this application."

Mr. Mark Harral: *“So the rule says the Board shall conduct an evidentiary hearing on the permit or permit amendment application if a party appears to protest the application, which none have, or if the general manager proposes to deny that application in whole or in part, unless the applicant or other party in a contested hearing request the District to contract with SOAH to conduct the evidentiary hearing. Because we are still in the preliminary hearing, the City of Fort Stockton wants to go ahead and request a SOAH hearing. Because we believe that the comma where it is placed – it is unless we request it.”*

District’s legal counsel commented: *“No, my reading of the rules is that the Board, at the very front end of the first day of the hearing, conducts the initial preliminary hearing. And the Board President, the Presiding Officer, makes the determination of whether it is contested or uncontested. He made that determination and then advised that we are going to proceed with the hearing as an uncontested hearing...And then we went into the merits.”“Then we heard from the General Manager as is typical in the District – to summarize the application, not to take a position on it but just to summarize it. We’ve been doing that for a couple of years. And then the applicant has an opportunity to address the merits...A SOAH hearing is very different. You have a hearing before an Administrative Law Judge that provides for discovery between parties. Parties are in dispute on issues. There’s cross-examination. If there is no protest to the application there is no need for a contested hearing at the State Office of Administrative Hearings.”*

Doug May offered testimony about economic growth in the City and surrounding area in his capacity as Economic Director for the City and County. City Manager Raul Rodriguez stated that the 2 wells could produce around 1,000,000 gallons a day, and that a little over 1,000,000 gallons a day were normally used on a winter day.

Mayor Chris Alexander was sworn in to give testimony on behalf of the City of Fort Stockton. He explained the detail for reasons that the City need \$45.5 million immediately for infrastructure budget projections. He also pointed out that the Groundwater Management Area 7 Edwards Trinity Aquifer shows 117,426 acre feet available for Pecos County, and that 119,564 acre feet has already been authorized.

Mr. Harral withdraws the application.

The Presiding Officer states that if the City has an emergency, the two wells at issue should be used.

Questions are asked about whether to proceed on the industrial use portion of the application, and about purpose of use related to Republic. Mr. Harral responds that the application is withdrawn and that he will need to discuss with City Council resubmission at a later date.

II Adjourn hearing and consider and/or act on **Production Permit for City of Fort Stockton.**

President Jerry McGuairt adjourned the hearing at 1:48.

The application was withdrawn and no action taken.

PRODUCTION PERMIT AMENDMENT HEARING for Pecos SS, LLC.

I Call to order at 1:49p.m. the Public Hearing on **Production Permit for Pecos SS, LLC.** by President McGuairt.

Party representing application: Gary Harrell, Pecos SS, LLC
Mark Osborn, Attorney

Protestant to application: None

Public Comment: None

Ty Edwards presented the application to the Board. The approved well system is approximately 2 miles north of highway 67 and 1.5 miles west of Owego Rd, in Pecos County, Texas. The purpose of this Permit Amendment is to change the location of use of groundwater to add Ward, Reeves, and Loving Counties to the list of counties set forth in the permit. The location of use (as amended) should be Upton, Reagan, Glasscock, Midland, Crane, Crockett, Ward, Reeves and/or Loving Counties. The application is administratively complete.

II Adjourn hearing and consider and/or act on **Production Permit for Pecos SS, LLC.**

Jerry McGuairt adjourned the hearing at 1:52 p.m.

Mr. Gary Harrell, through his attorney Mr. Osborn, confirmed that they intend to abide to the original permit conditions.

Weldon Blackwelder made a motion to approve the permit amendment to change the location of use of groundwater to add Ward, Reeves, and Loving Counties to the list of counties set forth in the permit. The location of use (as amended) should be Upton, Reagan, Glasscock, Midland, Crane, Crockett, Ward, Reeves and/or Loving Counties. Motion seconded by John Dorris. Motion carried unanimously.

REGULAR BOARD MEETING Reconvened at 1:58 p.m.

- III Consider and/or act upon **Minutes of February 17, 2016**
Vanessa Cardwell made a motion to approve the minutes as presented. Motion seconded by John Dorris. Motion carried unanimously.
- IV Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending February 29, 2016.**
Ronnie Cooper made a motion to approve the accounts payable and treasurer's report and line item transfers for the month ending February 29, 2016. Motion seconded by Vanessa Cardwell. Motion carried unanimously.
- V Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending March 31, 2016.**
Weldon Blackwelder made a motion to approve the accounts payable and treasurer's report and line item transfers for the month ending March 31, 2016. Motion seconded by John Dorris. Motion carried unanimously.
- VIII Consider and/or act upon **STW Water Process & Technologies insurance bond for San Andreas Drilling/Production Permit.**
Paul Weatherby presented the stipulations for the drill permit granted:
On December 15, 2015, Ronald Cooper made a motion to approve the application for 5,000 acre feet per year from the San Andres Formation for industrial use. Authorization is approved to drill one exempt monitor well, drill 3 new wells, and either plug or replace the two existing flowing wells. A performance bond must be secured, and the bond must be approved by Middle Pecos GCD before proceeding with drilling.
- Once the monitor well is complete, the hydrogeological report shall be updated and provided to Middle Pecos GCD.
- Authorization is approved to export up to 5,000 acre feet annually for industrial use with an export fee of \$0.0249 per 1,000 metered gallons produced.
- Motion seconded by M. R. Gonzalez. The motion passed unanimously.
- Chance Murphy, representing STW Water Process & Technology, reported that he is in the process of moving and the box with his papers is misplaced at this time. The drilling companies had insurance and the rig will have a performance bond. Chance requested to table this item until the next meeting.
- The Board requested to have the all insurance documents and performance bonds brought before them.

Ronnie Cooper made a motion to table this item until the next meeting. Weldon Blackwelder seconded the motion. Motion carried unanimously.

IX Consider and/or act upon **Pecos County College Scholarships for High School Seniors.**

Three scholarships, one to each Pecos County high schools Imperial-Iraan-Fort Stockton, will be awarded to one high school senior from each school, based on a set of requirements provided by MPGCD. Papers will be due May 6th, and judged by a committee from MPGCD.

John Dorris made a motion to approve the three scholarships as described above. Seconded by Vanessa Cardwell. Ronnie Cooper requested an amendment to review the scholarship next year. Motion passes unanimously.

X Consider and/or act upon **Aerial Flyover.**

The successful flyover last year found 27 violations. Another flyover is scheduled for May 9th at a cost of \$1,250 for 3 to 4 hours. Most of the issues are in Northern Pecos County. The area covered will be from Highway 1053 to Highway 18 and Highway 1450 to the Pecos River. The Railroad Commission is invited to fly with us, but will not be contributing funds.

Ronnie Cooper made a motion to approve the aerial flyover. Motion seconded by John Dorris. Motion carried unanimously.

XI Consider and/or act to approve **General Manager's 2015 Annual Report.**

John Dorris made a motion to approve the General Manager's 2015 Annual Report as presented. Motion seconded by M. R. Gonzalez. Motion carried unanimously.

XII Consider and/or act to approve **General Manager's 2016 1st Quarter Report.**

Ronnie Cooper made a motion to approve the General Manager's 2016 1st Quarter Report as presented. Motion seconded by Weldon Blackwelder. Motion carried unanimously.

XIII **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, Drought Monitor Map and ongoing Water Quality Analysis.**

- Well Registrations: Progress report in notebooks. 5 non-exempt wells were transferred to exempt status.
- Production Permits: 1 for a Coyanosa farmer. Maybe 2 or 3 replacements.
- Drought Monitor Map: The current drought monitor map in their notebooks.
- Water Samples: Samples are being collected around the County.

XIV Consider and/or act upon **General Manager's Correspondence.**

- March 3, 2016 Texas House of Representatives – House Energy Resources Committee met reference A) a Memorandum Of Understanding between a Groundwater Conservation District and Railroad Commission is necessary to give authority to intervene in cases where imminent threat to groundwater is occurring. B) Repetitive violations reference groundwater protection by non-compliant operators. C) Transparency with the Railroad Commission needs to improve.
- April 4, 2016 Fort Stockton Holdings, L.P. appealed to the Court of Appeals 8th District of Texas in El Paso, TX, to file administrative record on a flash drive in lieu of filing a paper version – motion granted.
- Texas Groundwater Summit, August 23-25, 2016 in San Marcos, TX
- GMA 3 stakeholder meetings March 16th and April 26th in Ward County.
- GMA 7 meeting April 21st in Fredericksburg, TX.

XV **Directors' comments.** No comments.

XVI Consider and/or act upon **agenda for next meeting.**

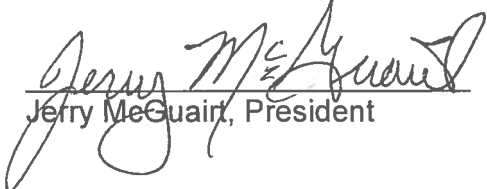
- STW Water Process & Technologies insurance bond for San Andreas Drilling/Production Permit
- Production Permit application for the City of Fort Stockton
- Mandujano Brothers permit application

XVII **Adjourn.**

Weldon Blackwelder made a motion to adjourn the meeting at 2:42 p.m. Motion seconded by John Dorris. Motion carried unanimously.



M. R. Gonzalez, Secretary/Treasurer



Jerry McGuair, President

Date Approved 6-21-16