

**BREWSTER COUNTY GROUNDWATER CONSERVATION DISTRICT
BOARD OF DIRECTORS MEETING**

Monday, September 15, 2008

MINUTES

BOARD MEETING

The called meeting of the Board of Directors of the Brewster County Groundwater Conservation District was called to order by Vice-Chairman Mike Davidson at 8:30 a.m. A quorum was present. Members of the Board present were: Vice-Chairman Mike Davidson, Leo Dominguez, Billito Donnell, Hiram Sibley, and Rob Dean. General Manager Conrad J. Arriola was also present.

Vice-Chairman Davidson declared that a quorum was present and the notice of the meeting had been posted as required by law.

Mike Davidson stated that the Board was going to skip the public hearing section of the agenda to start and finish the regular business of the District. Mr. Davidson said after that portion of the meeting the Board will recess and start the public hearing portion of the meeting at 9:30 a.m.

8. Approval of Minutes

The General Manager gave a copy of the August 4, 2008, meeting minutes to Board for approval. After review, Mr. Dominguez moved to accept the minutes, and Mr. Donnell seconded the motion. Mr. Davidson called for the vote, and the Board unanimously approved the minutes

9. General Manager's Report, Directors' Report/Discussion and appropriate action

The General Manager told the Board he had been working on the revisions to the District's rules. He told the Board that a public hearing notice ran twice in the Alpine Avalanche, giving the public notice twenty days before this meeting. Also, he mentioned that he had received three new well applications and they met the District's requirements. The General Manager told the Board he did not have anything else to report.

10. Financial Report

The General Manager presented the Board the August 2008 financial report. He reported that the District had two expenditures the for the Month, besides monthly salary. He reported that he paid \$243 for the renewal of bonds for four Directors and paid \$38.37 for the telephone bill. He also reported that the District did not have any pending bills at the current time. Mr. Sibley moved to accept his report and Mr. Dean seconded the motion. Vice-Chairman Davidson called for the vote and the Board approved the General Manager's financial report.

11. Discussion and appropriate action on August Drilling permits

The General Manager reported to the Board that he had received four new well applications for the month of August. The General Manager told the Board that each well had met the District's requirements:

David Dierlam
Ted Lujan (3)

Mr. Donnell moved to accept the four new well drilling permits and Mr. Sibley seconded the motion. The Vice-Chairman called for the vote and the Board unanimously accepted the motion.

12. Consider and discuss well database needs for the District/ Discussion and appropriate action

The General Manager gave the Board a copy of a proposal from Banks Environmental Data that the District received from the Spring. The General Manager told the Board this proposal is the only proposal he had received. Mr. Davidson asked the General Manager if he could contact a representative from Banks, Inc. to come explain and present this proposal from the Board. Mr. Davidson told the Board that he would like to get a proposal tied down sometime before the end of the year.

13. Discussion and appropriate action on matters related to Groundwater Management Area #4

The General Manager did not have any information on this item but he told the Board he would check to see when the next meeting would be taking place.

14. Administrative and Procedural Matters

The General Manager asked the Board if meeting the 3rd Monday of the month was still working for them. Mr. Davidson asked the Board if meeting at 9 a.m. would work instead of 8:30 a.m. The Board agreed to start meeting on the 3rd Monday of the month at 9 a.m.

*****Recess*****

At 9:15 a.m., Mike Davidson called a recess until 9:30 a.m.

3. Convene Public Meeting to Receive Public Comment: Requests, Suggestions, Recommendations, and Comments Regarding the Revised District Rules

At 9:30 a.m., Vice-Chairman Mike Davidson convened the District's board meeting from recess to begin receiving public comments, requests, suggestions, recommendations, and comments regarding the revised District Rules. Mr. Davidson reminded the Board that only comments regarding the District Rules be made. Mr. Davdison opened up the floor to the public.

On behalf of Marci Roberts, a gentlemen read the following comments into record.

1. The Rules will be liberally construed in order to allow the District to perform its duties with flexibility and fairness. (legal trouble with this statement, kind of like drawing up a contract and then saying that you do not have to comply)

*2. **RULE 5.1 MAXIMUM ALLOWABLE PRODUCTION** - need some clarification that acreage is contiguous*

3. As discussed in the last meeting, this fee cannot be more than a regular permit according to Chapter 36, but need to confirm that is so. H.B. 787 allows for transport fees in Section 5(c). Does this additional legislation allow us to impose stricter transport fees? = Groundwater produced from within the District may not be transported outside the District's boundaries unless the Board has issued the well owner an export permit. A \$500 application is required.

4. 3. All non-exempt operating wells will be metered. (costs incurred by the applicant)

5. This conflicts with Legislation H.B. 787 - RULE 12.4 NOTICE AND ACCESS TO PROPERTY: Board members and District agents and employees may not enter private property without the permission of the landowner or the landowner's agent. If a landowner or a landowner's agent refuses to allow District agents and employees to enter the property to inspect a permitted well and to ensure compliance with the Rules, the Board may revoke any permits held by the landowner previously issued by the Board or deny any permits pending before the Board.

H.B. 787 states – “An agent or employee of the district may not enter private property without the permission of the landowner or the landowner's agent except to inspect a permitted well and to ensure compliance with the district rules.”

This house bill was passed specifically for Brewster County Groundwater Conservation District and it does not seem appropriate to conflict with it.

6. We would like to pose an important question to the board for consideration. If 4 landowners have a drawdown of their wells, should not their responsibility be, to provide the hydrological data to the board and then the board's responsibility to investigate why this is happening? Why should the responsibility be on the well owner to figure out and pay for the studies to investigate why this is happening? The board's function is to preserve our water resources and if something is happening that is endangering that, why should the burden be on the well owners to figure it out? It seems like the owners responsibility would be only to provide accurate data that the drawdown is happening. We understand that the District has limited financial resources, but wanted to draw attention to this seemingly unbalanced plan. Middle Pecos County does their own monitoring so the burden of monitoring is not on the well owner. If the well owner is going to take the time to monitor their own well.....it seems that the District should take it from there. All of the burden is on the well owner, who may not have the funds to provide this information. Meanwhile, the evidence would be showing that something is causing the drawdown and nothing could be done about it if the owner did not have the resources to provide the "experts". We would ask that the "expert" requirement be taken out of the rules under Rule 5.2.2 (3). This would allow the owner to provide experts, but not require them to provide experts.

Next, Megan Wilde asked why in Section 6 it states "Export of Groundwater out of the District, instead of Transfer. She also asked the Board why all existing non-exempt wells should be registered on or before June 1, 2009.

5. Review, Discuss, Modify, Publish Changes (As Advisable Considering Public Comments) to: District Rules

Mr. Davidson thanked the public for their input in regards to the District Rules and asked the Board to review the comments and go forward with the following changes to Rules:

The following changes to the Rules are the following:

In Section 1, Rule 1.3, Use and Effect of Rules, the Board omitted the word "liberally construed" and added "administered" in the last sentence of the paragraph to the following:

"The Rules will be administered in order to allow the District to perform its duties with flexibility and fairness."

In Section 5.1, the Board added the word “contiguous” to this sentence: “*Because the District’s goal is the long-term sustainability of the aquifers within the District, in order to minimize, as far as practicable, the draw-down of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, and in order to protect the aquifers in the District, no person may produce more than 163,000 gallons of water (or approximately ½ acre-foot) per year per acre of contiguous land owned by that person (or per acre of land from which that person owns the right to produce water)*”

Next, in Section 5.2.2. the following changes are underlined:

5.2.2. The Petitioners will have the burden of proving that the wells of which they have complained are causing a draw-down of the water table within the common aquifer, a reduction of artesian pressure, subsidence, interference between wells, a degradation of water quality, or waste. Petitioners shall introduce (1) evidence of historical use in accordance with Section 36.116(b) of the Water Code and

(2) hydrological evidence and the opinion of experts supporting that petition

(3) The opinions of experts supporting their petition are encouraged
If the Petitioners fail to introduce evidence of historical use and hydrological evidence and the opinions of experts, the District shall reject the petition with prejudice against its being re-filed by the same Petitioners unless the Petitioners can demonstrate that conditions have changed and that they had good cause for failing to introduce evidence in connection with the prior petition.

In Section 6, the title “Export of Groundwater out of the District” changes to “*Transfer of Groundwater out of the District*”

In Section 8, Rule 8.1. the following sentence states “Exempt wells in the District that were drilled prior to the effective date of the Rules are not required to be registered, but well owners are encouraged to voluntarily register their wells in order to expand the District’s database to better enable the District to understand and manage the District’s water resources. Wells not registered with the District shall not have standing to petition the District for hearings regarding over pumping or degradation of wells. All existing wells that are not exempt wells shall be registered with the District on or before June 1, 2009.”

The Board decided to change the second sentence of the paragraph to: “*Wells must be registered with the District to have standing to petition the District for hearings regarding over pumping or degradation of wells.*”

Also, in Section 8, Rule 8.3 the Board decided to change the following sentence:

“Upon receipt of an operating well permit application, or intent to file the same, BCGCD will publish notice in the Alpine Avalanche and on the District web site, giving the date and time of the next District meeting where the application will be considered.”

to:

“Upon receipt of an operating well permit application, or intent to file the same, BCGCD will publish notice in the weekly newspaper of record and on the District web site, giving the date and time of the next District meeting where the application will be considered.”

7. Action on: District Rules

Mike Davidson asked the Board if the Board was ready to accept the changes to the Rules. Mr. Sibley moved to accept the changes and Mr. Dean seconded the motion. The Vice-Chairman called for the vote and the Board unanimously accepted the motion.