

Minutes of Meeting  
September 7, 2004 - 4:00 P.M.  
PVGCD OFFICE  
Cuero Plaza Mall-Suite 1129  
Cuero, TX 77954

**BOARD MEMBERS PRESENT:** Errol John Dietze (Chairman), Bob McCurdy (GM), Tim Voelkel, Bob Davis, Gary Colman, and Bubba Steen.

**IN ATTENDANCE:** Jim Allison (PVGCD attorney), Kay Wild (PVGCD Office Assistant), Mila Walker (citizen), Caroll Ann Werland (citizen), and Glen Ray (reporter/Cuero Record)

**CALL TO ORDER:** A quorum being present, and all notices properly posted, the meeting was called to order at 4:01 P.M. by the Chairman, Errol John Dietze.

**APPROVAL OF MINUTES:** Minutes of the August 18<sup>th</sup> board meeting were presented in the board packet. With no corrections, Gary Colman made a motion to accept the minutes as read, second by Bob Davis; the motion carried unanimously.

**PUBLIC COMMENT:** The chairman stated that there would be a three (3) minute time limit per comment per person. The first comment was presented by Mrs. Walker. She said in a conversation with Bob McCurdy, she stated there were twelve key issues on the proposed Rules and Management Plan that she wanted addressed. The first issue was concerning the defining of groundwater in DeWitt County as an aquifer. In a letter she submitted to Bob McCurdy, she detailed her reasoning of why she felt this needed to be reworked in the Rules and Management Plan. Secondly, she addressed the Policy Resolution Statements adopted by the Board 10/10/01, and indicated that they need to be included in the Rules and Management Plan. She said in comparing the Policy Resolution Statements to the current Rules and Management Plan, she felt that it did not specifically include those policies. Her concern is that "when the Rules and Management Plan are adopted and put into affect, the Policy Resolution goes away." She feels that there is nothing in the Rules and Management Plan that references the Resolutions, or states that they will remain in effect going forward. She indicated that she felt that there were discrepancies. Kay Wild instructed the Board at this time that the questions Mrs. Walker was referencing was in a letter recently given to Bob McCurdy, and none of the Board members had seen the letter prior to the meeting. The issues were not the exact questions from her first letter that was deferred to this Board meeting for addressing, nor was it on the agenda for this Board meeting. Mrs. Walker indicated that it was some of the same concerns as presented in the first letter, but were more explanatory and in briefer form. She was allowed to continue. Her third issue was regarding future new wells and the grandfather clause. Mrs. Walker said she is requesting a document from the Conservation District that clearly states that as a landowner with the wells installed prior to March, 2004, and she and her heirs, have been grandfathered; and the landowner and heirs are not to be regulated by the Rules and Management Plan being adopted and put into effect. She said that there may be future new wells or replacement wells drilled on the same land owned under the grandfather clause, and that the landowner and landowner's heirs should also be protected under the same terms and conditions presently stipulated in the existing grandfather clause provided by the District. Bob McCurdy informed Mrs. Walker that all new wells in DeWitt County have to be permitted if drilled after March 2004, even on land having wells that are exempt. Mrs. Walker said she did not object to the permitting, but felt that the heirs should be protected under the grandfather clause. Attorney, Jim Allison, said that this was getting into legal issues at this point. He had not seen the document before (letter from Mrs. Walker) and said it raises some legal issues. He asked that the Board hear Mrs. Walker's comments and explanations of her concerns, and that he would prepare a draft response particular to the legal issues. Chairman Dietze said that they would give Mrs. Walker more than three minutes to address her concerns. She then addressed the wording "hearings" in the District Rules and that it did not say "Public Hearings" throughout the document, and said that she "feels that landowners and voters would not have to be included when the District Board decides to hold a hearing to amend the District Rules and Management Plan, without the input from landowners and voters that would be most affected by the amendment of these District Policies." She also pointed out a typo, "reheating" instead of "rehearing", which she had communicated to Mr. McCurdy in an earlier conversation. She indicated that the word "public" gets dropped out of the document. Jim Allison said that hearings are addressed in the Water Code and he would be glad to get a response to her and site the sections; hearings and public hearings are the same. Bob McCurdy said the rules for meeting notices are under Chapter 36, requiring a 7 day notice prior to a public hearing and 72 hours prior to meetings. Mrs. Walker's concern is the leaving out of the word "public" when referring to hearings. Mrs. Walker also feels that the words "exempt" and "non-exempt" need to be clarified throughout the document. Mrs. Walker feels that the "verbiage" is too vague and leaves it open to the manipulation of the District Board. The next concern from Mrs. Walker was regarding large production wells and the Emergency Drought Management Plan and the installation of large production wells. She said there are key things that she picked up on that need to be addressed or clarified in the documents before they are adopted and put into effect. Mrs. Walker also feels that variances regarding distancing of wells are too vague, have no guidelines, and left up to the interpretation of whom ever is serving on the Board at the time. This concluded Mrs. Walker's comments, and Chairman Dietze asked if there were any comments from the Board regarding the issues Mrs. Walker brought to the table. Gary Colman said that he felt that

Jim Allison should address her questions/concerns. Jim Allison said that he recommended that the Board hear Mrs. Walker's concerns at this meeting, but that he would like to draft a response to those concerns that raise legal issues, or that are addressed by Chapter 36 of the Texas Water Code. Mr. Allison told Mrs. Walker that we can only do what is in the statutes. Tim Voelkel said that the Board was glad to have public comment and have citizens concerned about what is going on and offer input. Mrs. Walker said that she thinks Mr. McCurdy has had quite a few people come by the office with questions. Bob McCurdy said that the Board has to be advised as to what legal position to take on all the Rules, and we are abiding by the Texas Water Code. That is the guideline and that is what we have to go by. Bob McCurdy said that we want to address all of these issues as best we can, but being a taxing entity, and having the responsibilities we have, we have to be very careful that we do it in the guidelines that the State gives us. Mrs. Walker said that she "did not want to lose her water rights." She said that "there was nothing in her deed that specified water rights, or having to give water easements, and that there is no proof that her water is being supplied by an aquifer or sitting on an aquifer." Bob McCurdy said that "we operate under the TCEQ and the TWDB. When you speak of these aquifers, and when you go to the State or regional level, they will say that you are in the Gulf Coast Aquifer. It is a very broad term, but that is the best description you are going to get from any engineering study, at any level. The Gulf Coast Aquifer is different in different places and it has different layers in it. There is no way to say which major or minor aquifer you are in." Mrs. Walker stated a hypothetical situation of what if she drilled a well and came up with no water. "What is going to happen then? Am I going to suck water out of my neighbors? Because it is an aquifer, are you then going to provide me the water on my land because every well I drill comes up dry and my neighbor has lots of wells and tons of water?" Bob McCurdy said that if your neighbor is doing damage to your well, it will be addressed. Mrs. Walker said that she has good tanks on her property, and good water, but there might be situations where people do hit dry wells. Jim Allison said that "if you go deep enough in DeWitt County, you will hit the Gulf Coast Aquifer; it is under your land. It may be 1,000 ft. under, but it is under there." Mrs. Walker indicated that there was an instance she knew of where a well went down 300 feet and came up with contaminated water. Bob McCurdy said that there are no guarantees on quality of water, but there is an abundance of water in De Witt County at any given level. Bob McCurdy said there are areas that have so much sulfur and chlorides that you can't drink the water and can only use it for livestock. He said that a lot of people have drilled irrigation wells and found that they can't use the water because it has so much salt in it. Bob McCurdy also said that "what the big boys are looking for is an abundance of water, and they don't care if it is salty as they would be treating it one way or another. That is what we are trying to do with the District is hold the line on massive pumping out of DeWitt County so that you will have water available on your place. That is the whole purpose of this District." Mrs. Walker asked if the District could not accomplish that control without declaring her groundwater as an aquifer. Jim Allison said that the State defines what groundwater is and puts the groundwater under regulation of the District. Mrs. Walker said she wanted to see that ruling, and Jim Allison said he would send her those sections that apply. Mrs. Walker said she feels it should have been stipulated in her deed that her water rights belong to the Conservation District. Bob McCurdy said "you own your water rights. With the rule of capture the way it is right now you own your water rights." Jim Allison said that groundwater is subject to limited regulation by the District, or in the absence of a District, the State. Jim Allison also said that the deed doesn't have anything to do with it. You get what you get and what you are legally entitled to when you purchase something, and you are always subject to State law. Bob McCurdy said if there wasn't a district here, the State would come in and declare a water management area. This is the reason so many district have formed so that the groundwater is regulated locally rather than by the State. If we don't do it, the State will. Mrs. Walker reiterated that she feels that the Policy Resolutions from before need to be included in the Rules. Mrs. Walker said that there are a lot of things that were committed to, adopted and passed in the Policy Resolutions that she does not find in the "verbiage" of the Rules and Management Plan. Jim Allison said that he would address that in his draft response as well. Jim Allison said that "statute requires, and provides, this order of documentation in regulation with the District Management Plan. The Management Plan is a broad document that addresses general issues and principals that has to be filed and approved by TCEQ, and that has been done by this District. Rules are means of enforcement, and they must be adopted at the public hearing, and they are subject to Chapter 36 as to what goes in the rules. Policies are still formal statements of the District but they are not stated in the Rules or the Management Plan. The Management Plan can only be changed with the approval of the State, Rules can only be changed after public hearing and adoption by the Board, policy can be changed by the Board without the necessity of a public hearing. Those are the levels of regulation. Generally the Rules contain the permitting process and things of that nature that apply to wells and drilling." Mrs. Walker said again that she sees no reference in the Rules or the Management Plan to the policies that were voted in. Jim Allison pointed out that "they are policies and not rules; they are on different levels. You don't state your policies in the Rules or the Management Plan because they are policy statements." Mrs. Walker asked what happens to the Policy Resolution since the infrastructure under which the District is formed is going to be executed on the Rules and the Management Plan. Jim Allison said that there are instructions for the General Manager to follow just like the Rules, and they can be changed by the majority of the Board. Mrs. Walker said that "the way it is written, the Board can do anything they want, any time that they want." Jim Allison said "that this is why you elect the Board. It is like saying the school board can run the school; yes, that is what they are elected to do." Mrs. Walker said the things that were laid out in the Policy Resolution for start-up are very specific of what the District is going to do and feels that when you get to the Rules, the policies aren't stated. Jim Allison said that you don't put every policy in the rules. Mrs. Walker said that if she had an issue and comes before the Board, and say that your policy was this and the rule is this ... which is going to supersede; the rules or the policy? Jim Allison said "you're assuming that there is a conflict and I don't assume that. Just because the policy is not in the rules does not mean there is a conflict." Mrs. Walker said that she feels that there could be. Mrs. Walker indicated that that is why she wanted a committee formed to go paragraph by paragraph and

say, "You say this, this is what this says, so are you contradicting what you promised in the Policy Resolution, or does this not apply any longer." Jim Allison said he could not answer hypothetical questions and asked Mrs. Walker to point out some area in the Rules that contradict. Mrs. Walker then addressed a paragraph regarding the grandfather clause she feels is just vaguely addressed. Jim Allison said he did not think it is vague at all. Mrs. Walker said that the Policy Resolution specifically states that all the wells are going to be grandfathered, but yet she doesn't have anything with regard to a document that specifically states the terms or conditions of being grandfathered. Jim Allison explained the meaning of the term grandfathered to Mrs. Walker; "Grandfathered means that the production and permitting requirements and spacing requirements do not apply to a well that is in place prior to the adoption of the Rules. If you increase production, then that increased production would be, and is required by law, treated like any other production of groundwater in the District. The District, I think, must grandfather previously existing wells and their production. I don't think you can constitutionally adopt a district and impose regulations on those previously existing wells and their production. But, any new wells, or any increase in production of those wells may bring them within the regulations of the District; that is what Grandfathering means." Mrs. Walker indicated that she still does not think it is clearly stated in the Rules with regard to the "verbiage." Jim Allison said that you don't put all the verbiage in the Rules. Mrs. Walker said "it is difficult to go through and reference every single paragraph because a lot of clarifications or insertions or additions impacted numerous paragraphs throughout the Rules." Jim Allison said it is also difficult to address situations that are displayed hypothetically as well. Mrs. Walker said that the grandfather clause exists in the Policy Resolution and there is no elaboration or clarification in the Rules. Jim Allison said he did not see where clarification is needed or would be beneficial, and if there is a conflict, he assured her that the Board would like to know what the conflict is; and if there is a conflict, they would address it. Mr. Allison said "as best I can tell, the Policies and Rules are compatible." Mrs. Walker asked if she should go through paragraph by paragraph. Jim Allison said he would rather take the document (her letter) back and prepare a written response; "I think that will be more constructive." Tim Voelkel said if there is a contradiction anywhere in these documents, he again assured her the Board would want to address it as much as anybody else. Mrs. Walker's next question was regarding who serves as a hearing examiner? Jim Allison said that the Board would have to appoint one. Mrs. Walker indicated that that term is not in the glossary. Mrs. Walker asked if it is one of the Board of Directors, a citizen, or a landowner? Gary Colman told Mrs. Walker that it can be anybody; it is whoever the Board appoints. Mrs. Walker asked if there were requirements of knowledge with regard to the person appointed. Mr. McCurdy assured her that we would of course try to find somebody that would be qualified. Chairman Dietze said that it would match the circumstance. Depending on the circumstances determines how and where we go to get a hearing officer. If the issue pertained to a certain issue, we would go to that individual who is qualified in that area. Mrs. Walker then said "so my land groundwater is going to be declared an aquifer and going to fall under these rules." The Board responded that it is an aquifer, it's not being declared, it is an aquifer. Jim Allison pointed out that it is not the decision of this Board, it is State law. He said "it is no different from any one else in this room. The water under every piece of land in the State of Texas is subject to regulation by the State. It is all groundwater and part of an aquifer." Mrs. Walker said that "even though geologically it's not plotted on the map and identified as an aquifer?" Jim Allison indicated that one of the things being done right now is having a modeling study done to try to determine aquifers in this county. It is largely unmapped until someone starts producing. The State says that groundwater is subject to regulation, no matter where it is. Bob McCurdy said the State looks at it in two areas, surface water and groundwater. Jim Allison said the State doesn't allow any local regulation of surface water. Fortunately, they have allowed some local regulation of groundwater. In stead of doing it all in Austin, they have allowed groundwater districts. Mrs. Walker indicated that she looks forward to Mr. Allison's response in reference to the State code. Jim Allison said "I think you will find it helpful; I think you will find a lot of these things are answered in Chapter 36 of the Texas Water Code." Mrs. Walker said that she has talked to some people with the Goliad Conservation District and they did receive a document from their district stipulating that they were grandfathered. Gary Colman said if you register your wells (Goliad did a voluntary registration of pre-existing wells), you will have a document that says you are grandfathered. The burden of proof that it's an existing well is on the back of the landowner if they choose not to coming in and register their exempt well(s). Mrs. Walker indicated that she has documents from the drillers, and inspection of her water as to when they were drilled. Gary Colman said that the PVGCD would accept that as documentation that it is a grandfathered well. The District offers for someone to come in and have the District certify that it is a pre-existing well; therefore grandfathered well. Mrs. Walker indicated that the drillers would be able to verify it as a pre-existing well. Jim Allison said that drillers may not be here any longer; they come and go. Bob McCurdy said that all drillers are required to submit a drilling log to Austin prior to the formation of the PVGCD, and now they submit logs to this District office. She then said that "It seems that I am better off protecting my own wells and keeping them out from under your umbrella." Jim Allison said that he would want his well registered with the District and would want to hang on to all of documents; you then have two back-ups. Mrs. Walker said that she was going to put her documentation in the safety deposit box. Bubba Steen said "having your documents in a safe deposit box does not exempt you from the umbrella of this District. If your land is in this Groundwater District, it is subject to the rules and regulations of this District; and that goes back to State law. You not wanting them in there doesn't matter, if it lies within the guidelines of the PVGCD, it is under the control, as far as the control goes, of this body." Mrs. Walker said that "ya'll are the ones creating the rules." Bubba Steen said that that is correct. Bob McCurdy said that we are operating under State guidelines so what we do is according to State law. Chairman Dietze said "I think you have the same exact concerns that everyone on this Board has. The difference is that we have been doing this for three or four years, maybe five. We have been discussing the same issues, same concerns you have, and we probably understand it a little better than you do. We are here just to protect your water and try to not make it so complicated. When we hired Jim, we went all over Texas looking for the right person for the job to help us implement our

Rules and regulations and Management Plan. Bob McCurdy went to other districts, along with myself and Jim, to find out what we thought would best serve this area. We are here just to protect your water and try not to make it so complicated and draw any more attention than necessary. We're a public Board; we are here to try to please you. At the same time we are seeing some of our neighbors being challenged on issues that we're not ready to be there. We're not involved in the transportation of water at this moment. We're not involved in the same issues that Refugio and Goliad and Victoria are at this moment. If and when that happens, then we are probably going to have a lot of these hearings. Right now we are babysitting your water. We're babysitting the regulations that the State and Legislature implemented to try and protect what we think in the future could be a real issue. We're not trying to hide anything, we're trying to do it as simple as possible and still have rules and regulations that have some variation, some elasticity that we can stretch if we need to. You and I and everybody in this room have the same aquifer in DeWitt County. To me, that is not an issue. You've made it a big issue, but it is not an issue. It is something that we cannot control."

**AMENDMENTS TO DISTRICT RULES:** Jim Allison, per the instructions of the Board, took the proposed changes that were laid out at the last meeting on August 18<sup>th</sup>, and incorporated them in the text of the Rules with the exception of the one deletion regarding where the use straddles district boundary lines. Chairman Dietze indicated that every one had a copy of the recommended rules changes and asked for a motion to accept the rules changes as proposed. Tim Voelkel made the motion, seconded by Bob Davis; motion carried unanimously.

**ELECTION DATE ORDER:** Chairman Dietze read the Election Date Order: *Pursuant to Section 41.0052, Election Code, the Board of Directors of the Pecan Valley Groundwater Conservation District does hereby change the date of its general election for officers to the first Tuesday after the first Monday in November of each odd-numbered year.* Bob McCurdy stated that the purpose of the change is to be in the general election thus promoting a larger turn-out, and also saving the District money. We will contract with the county to run our election. Bob Davis asked how much it will cost us to have the county hold the election for us. Bob McCurdy indicated that he has not inquired about it yet. Jim Allison said that they usually charge a minimal amount. Bubba Steen Steen made the motion to make the change in election date according to the presentation; seconded by Tim Voelkel. The motion carried unanimously with all 5 votes. The document was signed by the Chairman.

**FINANCIAL SUMMARY:** The financial statement was provided in the board packet. Little activity occurred since the previous report with entries for payroll, well deposit refunds and utilities paid out. The current balance as of this date is \$65,181.46. Tim Voelkel made the motion to accept the financial report as presented, second by Bob Davis; the motion carried unanimously.

**ADJOURNMENT:** The Chairman called for a motion to adjourn the meeting. Bob Davis made the motion, Tim Voelkel seconded; the motion carried and the meeting was adjourned at 5:30.

**EXECUTIVE SESSION:** The Board began the executive session at 5:45. All agenda items, with the exception of a personnel issue and legal advise regarding criteria for public comments at public meetings, was deferred to the next scheduled Board meeting.

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Sec/Gary Colman

Recorded: Kay Wild/Office Asst/PVGCD