

**City of Alpine
Special City Council Meeting
February 21st, 2013
11:00 A.M.
Minutes**

**MEETING HELD AT BREWSTER COUNTY COURTHOUSE, COUNTY
COMMISSIONER'S COURTROOM, HOLLAND AVENUE, ALPINE, TEXAS**

1. Call to Order, Invocation and Pledge of allegiance to the flag – Mayor Pro Tem Mike Davidson called the meeting to order.

2. Determination of a quorum and proof of notice of the meeting – Mayor Pro Tem Davidson determined a quorum was not present. Mayor Pro Tem Davidson, Councilors Lujan and Asgeirsson were present. Councilors Bermudez and Gonzales were absent with excused absences and Mayor Rangra was also absent with an excused absence. City Secretary Molly Taylor was also present. Mayor Pro Tem Davidson said this would be an information only meeting since a quorum was not present and since there were no action items on the agenda. From the water district, Chachi Hawkins, Virgil Clark, Cade Killingsworth, Ike Roberts, Tom Beard and Tim Leary were present from the board. Mike Davidson, City of Alpine Mayor Pro Tem, said he was also on the board. He said Tom Santry, who was also on the board, was not present. Conrad Arriola, General Manager of the Board was present as well as Betsy Esparza, Deputy County Clerk and member of Judge Beard's staff.

3. Presentations, recognitions and proclamations – None

4. Reports – None

City Mayor's Report - None

City Attorney Report – None

City Manager Report – None

City Staff Updates – None

5. Citizens Comments (on agenda items) – None

6. Public Hearings – None

7. Consent Agenda – (Minutes, Financial reports, Department Written Reports, board appointments, etc.) – None

8. Information or Discussion items –

A. City Council to meet with Brewster County Groundwater Conservation District to share information and discuss means of working together to better understand and protect local groundwater. Information and discussion only; no action to be taken. (M. Davidson) -

Chachi Hawkins said that the BCGCD had a quorum and Mayor Pro Tem Mike Davidson determined that the City Council did not have a quorum. He said this was an informational meeting only and no action was to be taken. Chachi Hawkins said she would like to start first. She asked all members of the BCGCD to introduce themselves and said she was the Chairman of the BCGCD Board. All members introduced themselves. Mike Davidson said he was on both boards but would represent the City Council at this meeting. Chachi she said in 2001 the Texas Senate created groundwater districts all over the state. She said they have deemed that the groundwater district is responsible for the water usage and the data that comes from that and the availability of groundwater for the counties they represent. She said Brewster County held an election to create this entity. She said the election passed in Brewster County 10 to 1. She said it created the district as a part of the county and is totally funded by the County. She said it is not a taxing entity. She said they get all their funding from Brewster County. She said all of the board are totally volunteer and they are appointed by the County Commissioner's Court. She said in their enabling legislation there is information in there about how they are formed. She said so many people represent rural and so many people represent the city and she said they each represent a district. She said when the state of Texas formed these districts they found in the water code under section 36.121, which was created because Tom Craddick put it in there to protect the City of Midland. She said instead of just having it for the City of Midland, he made it so that there is a population number, it sweeps past Midland and covers us and other towns. She said the City of Alpine and the wells that they own are not under BCGCD jurisdiction. She said for their purposes, that means that the City of Alpine is the biggest user and the biggest pumper of water in Brewster County. She said because it does not fall under the groundwater district's jurisdiction, they have no knowledge of what the city is pumping or what the usage is, or what the city's needs going forward might be. So in order for the BCGCD to fulfill their responsibility to the County and the State, that they are charged with, they need to have the planning ability for the future of what Brewster County needs. She said if they do not know what their biggest user needs they cannot do that in an accurate measure. She said they have for at least the last two legislative hearings, tried to work with the city to be able to file legislation to overturn or exempt us out of this 36.121 of the Texas Water Code. She said she was not around the first time we did this, but she believes the first time we did it we got by with the City Council's part and

our part and the bill was filed. She said because there was so much education funding and business going on, in the legislature at that time, any local issues went by the wayside and never went very far. She said two years ago, when the legislature met again, they met with the city on a number of occasions. She said Councilor Asgeirsson was there, as were Councilor Gonzales and Councilor Bermudez. She said they actually came to an agreement to file the legislation and then they had lots of meetings with the city to see what we could do. She said the players at the time were under some misguided information. She said they tried to calm all of those misconceptions and help everyone understand what their purpose was and she said they really thought they were pretty close to an agreement. She said at the last minute, something happened at the city council and it got voted down. She said that was all for two years ago. She said now they are back again to try to reach the City Council and to get past this misguided information for all the years past. She said they believe very strongly in the fact that this needs to be overturned for a number of reasons. She said the biggest reason is for the BCGCD to be able to fulfill their commitment to the County and plan properly for availability in the future. She said they need to know what their biggest water user is using. She said they have to be able to know that. She said in the past they have asked for that information just for the city to provide them with voluntarily. She said they never received them. She said they finally filed a records request and the first thing they got was a document that looked like a CIA document and it was all blacked out. She said finally three or four months ago they got the information. She said their intent is that we are all on the same page about this. She said all of us want to make sure that Brewster County, including the City of Alpine, has plenty of water to go forward. She said that is what their job is, to make sure they have planned appropriately. She said they really want to do this through a partnership with the City. She said in that way, they would not have to file an open records request every time they needed information. She said that is one of the purposes and the need to overturn this. She said the other thing is that their belief really is that the city of Alpine should be under the same rules, obligation and situation that every citizen of Alpine has to abide by, and every citizen of Brewster County has to abide by. She said the City should not have a separate set of guidelines from everybody else. She said that is the other side of the coin. She said there were a lot of concerns on the City Council's part. She said they are ready to sit down and spend however much time they need to help the Council to understand where the BCGCD is coming from and putting those concerns to rest. She said the concerns were based on incorrect information. Councilor Asgeirsson had a question for the City Secretary. She said she believed that as a Council they voted to have Cindy give BCGCD the information they needed for the water usage. The City Secretary said we did but there was some conflict about private water wells or individual water wells. She said it was Cindy Hollander who gave out the information. Chachi said she believed it was leased well information that

Cindy did not have to give out under the open records act. Conrad Arriola said the City Council, approximately two years ago approved steps to give the information to the water district. He said a year later, all of the motions that were approved got rescinded, by the council. Councilor Asgeirsson said a lot of people feel that 36.121 is a security blanket for the City of Alpine. She said what it protects the city from, or whatever, she is not quite sure. Chachi Hawkins said it protects the City from "us". Tom Beard said it does not protect the City but makes the City at risk. He said if someone drills near a city well, the City is exempted and the board cannot hear the city's complaint. He said those wells are being restricted. Tom said Craddick bracketed this bill and accidentally caught other cities. He said the reason they care if the city signs on to this is that they can't protect our water and you are the biggest user. He said we can't do anything to limit people damaging your water. He said it is interesting to note that there are more and more counties with groundwater conservation districts. He said sooner or later every part of the state will have a groundwater conservation district. He said the reason they have to is because the water code says that groundwater conservation is the preferred way of ground water management. He said if we do not manage to conserve groundwater locally, the state could jump in and tell us what to do with our water. He said he did not believe we wanted the state to jump in and tell us what to do with our water. He said if the Groundwater district does not do it there is no one else to do it around this county. He said he would emphasize to the Council, not that the BCGCD wants to regulate the water but that the BCGCD cannot protect the City because they are exempt. He said that is the main reason for this. Councilor Asgeirsson said she understands everything the BCGCD is saying but if the City agrees to become part of the BCGCD, then we do become part of the BCGCD's Rules and Regulations. Virgil Clark said the City is already a part of the district. He said for us to make intelligent decisions on withdrawal rates and the things that they are charged to do, they need information. He said he understands one of the fears that the city has is that they are going to be charged for pumping water. He said if the city is paying for the water they pump out of Jeff Davis County, Jeff Davis is not exempt there. He said the way the BCGCD is financed through the county it would be difficult for them to charge and there is no intent to do that. He said the BCGCD does not know what to protect and how do they know what the needs are if the City of Alpine is not under the jurisdiction of the BCGCD, He said every citizen of Alpine that drills a water well is under the jurisdiction of the BCGCD. He said it is just the existing city wells that are not. Councilor Asgeirsson said basically the biggest problem the BCGCD has is that they do not have any information on what is being pumped out. Virgil said pumping levels and static levels. Councilor Asgeirsson said if they got that information would that be enough. Chachi said that is the most immediate issue, but then the BCGCD cannot do anything to protect the city if someone comes in and drills a well right next to the city well. She said if the people who drill the

well meet all of their criteria, they are going to issue them a permit. She said if it runs the city well dry, there is nothing they can do about that, because the city is not under the BCGCD protection. She said there are a lot of people buying water and she said so far we have had Clayton Williams doing that in Pecos County and there is a group that is moving into the Hovey area that want to ship water out of here. She said right now they are fighting those issues but they cannot do anything on the city's behalf because the city is not part of them. She said that is almost as important as the fact that they do need the data about what the city is doing so that they can plan for the whole county. Tom Beard said if BCGCD cannot protect the City, who is the largest user, what are they here for? He said he does not want to stay on this board if they are not doing any good. Councilor Asgeirsson said maybe it would help if the BCGCD went through the steps, if we were part of the district and someone drilled a well. She wanted to know what the steps were that the BCGCD would take to protect the city. She asked what the difference would be for what we have right now and being a part of the groundwater district. Tom Beard said someone could drill near one of our wells and if the driller meets the criteria the BCGCD has no choice but to grant the permit. Since the city is not under the district, the BCGCD cannot protect the city. He said when you are faced with a specific threat you can see the danger. He said when you are not faced with a specific threat it is kind of hard to see it. He said they cannot help us if we are not under the district. He said if the city has a big well they would have to register it as a non-exempt well, and he said there are a number of things you need to consider. He said the city would then have to file a production permit and say the city wants to export so many gallons a year. He said their rules presently do not provide for any production fees. He said they do not plan to charge any production fees. He said they regard that as a disincentive to be part of this. He said that is not going to happen. He said this board is not a threat. He said they believe the district should be minimally intrusive. He said one thing they talked about during the last legislative session was having an interlocal agreement. He said they would be bound by it, other than just by their word. Chachi said the council before was under some misconceptions that we could put a tax or fee on the water that the city imported from Jeff Davis County. She said that is absolutely false. She said they have no control, no interest to control, no ability to control the water that comes from Jeff Davis County. She said they cannot do anything about that. Tom Beard said that is Jeff Davis County water and not Brewster County water. He said the board cannot do anything about that. Chachi said that has never been a part of their thoughts or ideas. She said somebody with the City dreamed that up. She said they are not a taxing entity so they are not going to change that. She said they can't tax anything. Councilor Asgeirsson said the Council had a problem before about representation for the City since the rural areas were already being represented. Virgil Clark said they are bound by enabling legislation as to who their members can be. Councilor Asgeirsson said she understood that

butVirgil Clark said they offered to let the Mayor be an ex officio officer. Chachi said the first thing we need to do is all agree to get the legislation filed. She said Eureste and Nevarez will do it but will only do it if the two of us agree. She said they will not do it if one side does not agree to it. She said once it gets filed, it sits there until we all say to them, "all right, go forward with it". She said filing it has a deadline. She said we have to be able to agree to at least get it filed. She said then we have time to talk about what the concerns are and last time we had that interlocal agreement that ironed out some of those concerns. She said the BCGCD is certainly willing to revisit those things and revisit representation. She said they want to make sure that the city is comfortable with what the outcome is. She said they want the city to be comfortable with what we end up with. She said they are all committed to do whatever they need to do to get this thing to happen. Virgil Clarke said if you have a well X and well x is close to someone else's property. He said well X is your well and it falls under 121. He said BCGCD is not going to regulate it or what the city does with that well. He said the city does what they want with it but they do not have protection. He said protection is keeping someone from drilling another well around us. He said he owns the property right next to the city well and drills a well and hits that same water. He said he is going to start irrigating. He said he is going to use a 100 acre feet a year which is a lot of water. He said his well starts dropping the static level and water level. He asked what the recourse would be. He said if that well was under the jurisdiction of this board and testify that someone drilled a well that is impacting the city well. He said the BCGCD would be the first board you could go to. He said you could always go to court and file a civil suit but they are going to back and say you are exempted from the groundwater board. He said that will not help you with the neighbor who is sucking all your water out of your well. He said the neighbor would be the one protected by the board. He said they do not know what our pumping levels are or our needs and there is nothing they can do. He said that is a real example of what Tom was saying. He said on the other hand you could say that we have protection for this but will charge you a fee. He said the board does not charge fees. He said the council could also say that they could change that and start charging fees. He said that would be a legislative change and not something that they could just change by just voting it in. He said whatever they do, they have to do equally to everyone in the county. He said as the biggest user, the city would have the biggest benefit with this board. He said he was like Tom and if they cannot do something to help, why are we here. Virgil said he did not get paid anything for serving on this board. He said this is important. He said it is important for the city and the county. Tom Beard said it was reaffirmed that a land owner does own the water beneath his land. He said their goal is that everyone should be treated equally. He said the Constitution of the United States says that. He said SB 121 now protects the city from regulation of the BCGCD and protects the city from the BCGCD charging fees. Mayor Pro Tem Davidson said he wanted to

make a quick point about the background. He said 36.121 came into being in 1995. He said no one knew of the existence of that and the assumption was that everyone would be under the district. He said the voters in that 10-1 election had no idea that Alpine would be exempt. He said if the city was under the jurisdiction of the groundwater district you could ask for a hearing and all parties would be at the hearing. He said you would look at the data and make a ruling. He said the groundwater district does not have its own police force or anything. He said if the district wanted to come and limit somebody's well pumping ability, they might take it to court to contest it. He said this being the case the groundwater district would go to court to defend its rules and that will not be inexpensive. He said that is likely that it will be against somebody like Clayton Williams or someone that has deep pockets. He said who knows where this would go. He said without the city and groundwater district working together you do not even have the first level of defense. John Armstrong, City Attorney, said he had lunch with the Mayor on Monday and he authorized him to speak on his behalf as to his position. He said the Mayor apologized for not being here since he has class to teach. He said he could not make a day meeting because of his classes. He said secondly the Mayor is in favor of purchasing monitors for our wells so that we can better produce the information for the groundwater district. He said the Mayor is interested in revisiting the idea of an interlocal agreement. He said in terms of our Jeff Davis water, considering entering into an interlocal agreement with Jeff Davis to trade services. He said we charge Jeff Davis for landfill and they charge us for water. He said these are small steps that we can take immediately. He said there is no reason that this board should not get this information. Chachi said the information we are looking for is no more than the information the City has to supply to TCEQ. She said it is already there. John Armstrong said it is totally in his purview as City Attorney that we follow the law and we are going to follow the law. Chachi said one question she had when John said the Mayor was interested in an interlocal agreement. She said that interlocal agreement in the board's mind comes after the filing of the legislation. John said he cannot speak to the Mayor's view on that. Chachi said there is not a reason for an interlocal agreement if they are not able to file this legislation. Councilor Asgeirsson said even though Dr. Rangra made all these comments, he does not make decisions for the Council. John said the Mayor just said that this was his opinion. Diana said if we have an interlocal agreement or whatever, the council has to vote on it. Chachi said she did not think anyone expected action to come from this meeting today. She said she thought it was important that the council know what the time situation was. She said the ability to get this legislation filed timely is important. Virgil said if we don't get this filed, we can't do anything. Chachi said if we do not come to an agreement, it dies. Conrad said the filing deadline for the bill is 1st of April or March 31st. Chachi said we need to get this done. Mayor Pro Tem said he had been talking to Jerry who is Senator Eureste's point man on resource issues. He said Jerry said

the filing deadline was around the 1st of April. He said just to cut to the chase we don't really have to decide anything. He said he was going to propose an agenda item for the next meeting to support the filing of legislation. He said this would give us a window to come up with some provisions. Councilor Lujan said he was afraid that the next meeting of the council would be a long meeting. He said we are in the middle of something right now. He said he did not know how long it would be to debate in this meeting since we are expecting some controversy with this issue. He said the right decision is going to be made in the end. He said his point is that he is afraid that unless we ask for a continuation of the meeting, we don't know what we will address first, this issue or the existing issues on the agenda. Councilor Davidson said we have already seen how parliamentary procedure can work. He said they are not committing themselves to anything by just filing the bill to inform our senator or congressman to file this bill. He said we can shoot it down later. He said the controversy is going to be to vote to pass the bill. He said someone can just say to call for the question. Chachi said the council is agreeing to just file the bill and it can go dead anytime the council wants it to. She said after that there is plenty of time to have a real discussion or discussions. Chachi said you do not want to have this item on the agenda when you do not have the proper time to talk about it. Chachi said our next meeting is on March 14th. She asked if the council would be interested in making that another working time or did they want to set a separate meeting. Chachi asked if it was possible to set a time to meet with them again. John Armstrong asked the City Secretary to call the council and see what would be the best date for them to meet again with the BCGCD. Councilor Davidson asked if the BCGCD would be willing to meet early evening instead of during the day. The board said they would be willing to do that. Chachi said to just get back to the board with a date so they can see if it works for them. Conrad said during the day the BCGCD could meet and then recess until later in the day to meet with the Council. Chachi said one thing she would like to bring up so that the council could be aware of what is going on with them is that they are currently in the process of reworking their rules. She said the main part of what they are reworking is the permitting process. She said the rest of it they have basically left alone. She said they are making it so they know more about what is going on and once the well is drilled what happens with it after that. Councilor Lujan said he wanted to make a comment. He said he is walking out with the understanding that we are going to file this bill. Chachi Hawkins said the board wants to make sure that they help with all the city's concerns. Virgil Clark said we need to protect the water for everyone. He said somehow we need to have common ground. Councilor Lujan asked why we were different? Chachi said it was not the intention of the original legislation. She said the board is intent on making everyone comfortable with what their rules really are. Production fees were discussed and it was stated that they can only charge production fees for what it costs to monitor wells. Councilor Lujan said he did not have

a problem with production fees. He asked if the board could help the city with obtaining grants and they said they were not able to do that since they were totally funded by the county. Councilor Lujan said he wanted to say on the record that he heard there were already some councilmembers who were against this and did not want to even discuss this bill. He said that is very disappointing to him. Chachi Hawkins thanked everyone for coming.

9. Action Items to be accompanied by a brief statement of facts, including where funds are coming from, if applicable. (Action items limited to 15 per meeting.)
- None

10. Citizen's Comments (limit 3 minutes) - None

11. Council Member's Comments and Answers – None

12. Executive Session - None

13. Action – Executive Session - None

14. Adjournment – Meeting was adjourned.

I certify that this notice was posted at 1:30 P.M. on February 15th, 2013, pursuant to Texas Open Meetings Act. (Texas Vernon's Annotated Civil statutes, section 551.043 Texas Government Code.) This facility is wheelchair accessible and accessible parking space is available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please Contact the city secretary's office at (432) 837-3301 or fax (432) 837-2044 for further information.

Dr. Avinash Rangra, Mayor

Attest:

Margaret "Molly" Taylor, City Secretary

I, Margaret "Molly" Taylor, City Secretary, do certify that this notice was posted at 1:30 P. M. on February 15th, 2013, and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Margaret "Molly" Taylor, City Secretary