

**City of Alpine
Special City Council Meeting
March 14th, 2013
6:00 P.M.
Minutes**

- 1. Call to Order, Invocation and Pledge of allegiance to the flag – Mayor Rangra called the City Council meeting to order. Chachi Hawkins called the Brewster County Groundwater Conservation District meeting to order.**
- 2. Determination of a quorum and proof of notice of the meeting – The Brewster County Groundwater Conservation District had a quorum. The City of Alpine had a quorum. Mayor Rangra, Councilors Bermudez, Davidson, Gonzales and Asgeirsson were present. Councilor Lujan was absent. Conrad Arriola verified that the BCGCD meeting notice had been posted timely. The City Manager said the City Secretary posted the notice at 5:20 P.M. on March 11, 2013.**
- 3. Presentations, recognitions and proclamations – None**
- 4. Reports – None**
 - City Mayor’s Report -**
 - City Attorney Report –**
 - City Manager Report –**
 - City Staff Updates –**
- 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 Board of Directors to work on an Interlocal Agreement. (M. Davidson) – Chachi Hawkins said the BCGCD and the City Council have tried in the past, this is the 3rd or 4th legislative session, to get legislation passed that overturns the exemption that 36.121 that affects the City of**

Alpine and the BCGCD. She said we have had one meeting so far this year and she thinks even prior to that the Council voted to just alert our congressman and our senator to allow the bill to be introduced, knowing that we would have a series of meetings to come together on whatever your concerns are. She said that is the purpose of what we are doing here tonight. She said she would like to say a couple of things before the Council tells them their concerns. She said the BCGCD is here to address Those and to make the city council comfortable with what the BCGCD position is. She said first off when they were created back in 2001, it was with an election that happened in Brewster County where it passed on a ten to one margin. He said and so the citizens in Brewster County, including the citizens in Alpine, were overwhelmingly in favor of this Groundwater Conservation District. She said also the state of Texas has deemed that the Groundwater Districts in the State are their preferred governing body, and governing is not the right word, but that Groundwater Districts are the body that they believe ought to be responsible for sustaining and making sure that there is enough groundwater for the use of their jurisdiction. She said there was a reason this was created and the citizens voted overwhelmingly to create it. She said she would like to address what she knows are a handful of the city's concerns and if anyone has anything to offer or if she is stating what she believes to be the city's concerns incorrectly, stop her and tell her that she has it wrong. She said the last time we met, the city wanted representation on the BCGCD board and they agreed to that at the time. She said they actually have that now. She said three of their board members live in the City of Alpine and one of them is actually on the City Council which is what you asked for. Councilor Davidson, said he would like to clarify that technically since he has not been sworn in, he is actually impersonating a board member and not actually a board member. Tom Beard said he was not aware of that and asked Councilor Davidson why he had not taken the oath. Councilor Davidson said it was an oversight. He said he has met with the board a couple of times. He said technically he is not actually on the board. Chachi Hawkins said you are still there and depending on what comes of this whole thing, we will resurrect and fix that. She said also she thinks the city council was concerned that the BCGCD would put some kind of fee on the water on that they bring in from Jeff Davis County. She said nowhere in their rules do they have the ability to do that. She said they are number one not a taxing entity and number two they can't do anything about water that the city brings in from another county. She said that is their situation and not ours. Tom Beard said that is not necessarily from the BCGCD rules but it is state law. He said Texas Water Code, Chapter 36 says that. It said it is not necessarily a question of our rules, it is the law. He said we can change our rules but we cannot change that. Chachi said another concern of the city was that none of the BCGCD members are elected, and that they are appointed by a County Commissioner. She said that is how, when the election happened, and when the enabling legislation happened that

created us, that is how it was created, because we are not a taxing entity. She said they are appointed by the County Commissioners but again in their enabling legislation there is verbiage that says that every area of Brewster has to be represented by one of them. She said and so they cannot just have everybody on the board represent rural areas or everybody on the board represent in town areas. She said there is a mixture of them because that is how they were created. She said they are funded by the county, which is they were to have an election and vote to be a taxing entity, that would not happen anymore. She said they would have to become a taxing entity in order to fund themselves. She said in order to generate enough income to pay Conrad's salary and our small amount of expenses. She said they exist on not a lot of money. She said she thinks those are three of their concerns. She said the biggest reason that they think this is important is that we believe that when the citizens voted the BCGCD in to being that they did not know about 36.121. She said nobody knew about that at the time. She said they voted thinking that everybody in Brewster County, including the City of Alpine, would be on a level playing field and would have the same guidelines to go by. She said they also think that, and she has somebody say that, the city is protected from the BCGCD by having this exemption and they look at it as being almost exactly the opposite because you don't have the BCGCD protection if somebody comes along and wants to drill a well right next to your wells out at Sunny Glen, you have no protection when your wells run dry. She said you have protection as far as a civil lawsuit but you take the hit. She said they would be there to back the city up and it would be them that would take the hit if that kind of thing ever happened. She said they kind of went into that in our first meeting this year. She said those two reasons, they think are very compelling for the city to be on board with them. Tom Beard said he thought all the members on the BCGCD board are willing to have an election but not create another taxing entity. He said he does not want any more taxes. He said he does not have any opposition to making this board elected as a member of the board, but as an individual taxpayer in Brewster County, he would have an objection. He said if someone is drilling a well and they start drawing the city's water down and drying the wells up, the city cannot come to the BCGCD and say protect us. He said the groundwater district was created to protect all the wells and landowners in the groundwater district from this situation. He said if the city is not in the groundwater district, someone can do that, and the city cannot do anything about it. Tom Beard said Chachi said something about filing a lawsuit but the city could not do that since they are not a part of the groundwater district. He said the city could file a lawsuit and spend \$50,000 but ultimately the court would say that the city has no standing and the lawsuit would go away. He said without being part of the district, we would have no protection. Councilor Bermudez asked if we were part of the groundwater district and this were to happen, how could the groundwater district help us. Tom Beard said the new well would have spacing

requirements, and they would have to follow those if the city was a part of the groundwater district. He said if they start pumping even if it is within the spacing requirements, when they start drawing down, there is nothing you can do about it. He said the district could, if the city were a part of the district. He said we could because what you would do if you were to petition us that they are damaging your well is ask us to change our rules or change our production rules and they can do it. He said if you are not a member of the BCGCD they cannot do anything but sit there and watch your wells get lower and lower. He said the City Attorney may disagree with his opinion on that. He said the last thing he would tell the city is they believe it is kind of like a constitutional provision. He said one man one vote and we all need to be treated equally. He said in Brewster County we are not treating everybody equally. He said the city, through no fault of their own, and they are not blaming anybody, due to Tom Craddick years ago, you all are not being treated equal. He said or conversely he is not being treated equal to them. Chachi asked if the concerns that she outlined were still concerns for the city. She asked if they were still issues as the City of Alpine saw them. Councilor Gonzales asked how it is that if we give this 36.121 up, it is going to affect the BCGCD as an entity to keep the City from being able to be a member of BCGCD. He asked what is it that the BCGCD feels like is holding them back because they are saying that the wells that we have are in Brewster County and that is what BCGCD is going to protect. He said the city has a well that is outside of Brewster County and beyond your scope. He said if we give that up though, we did not have you protecting us now for that well, and how is it that you are going to be able to protect us. Chachi said for the well that you are talking about that is outside Brewster County, the BCGCD has no jurisdiction there. He said that is Jeff Davis County. Councilor Gonzales said okay, if you are not able to help us there, then...Chachi said Jeff Davis County had jurisdiction there and can help us with that. Councilor Gonzales said then how is it, if we don't give up 36.121 that we become a member of the BCGCD and we are protected. One of the BCGCD members said you are saying not giving up 36.121, the BCGCD cannot protect the city because they do not have Jurisdiction over the city wells. Councilor Gonzales said the last time we had this meeting and we were doing an interlocal agreement, if we did not give up 36.121 we could not become members of the water board. He said we did try to say that we would go ahead and be members but the board was saying that we could not be members. Chachi said she did not know that being members was the issue. Virgil said this was a jurisdiction issue. Chachi said it was a jurisdiction issue. She said it is an issue of do your wells in Brewster County fall under the jurisdiction of the groundwater district. She said is you want to call that a membership, she guessed you could but it is not really a membership. She said it is that your wells are under our jurisdiction and if somebody comes in and starts to drill a well....she said first off, they get a permit from us and if what they are telling us falls into all of our criteria, they are going to approve the

permit...but then if they find out, if the city is part of their jurisdiction, that their drilling is hampering the city wells, they can take action to change that. She said if the city is not under their jurisdiction technically the BCGCD does not know about the city's wells and they cannot do anything about it. She said the city comes to the BCGCD and there is nothing the BCGCD can do about it since the city is not under their jurisdiction. She asked if that made sense. Councilor Gonzales said he understands Brewster County but what he is trying to understand is how it is going to affect Brewster County if we give up 36.121. He asked why it is so important that we give it up. Councilor Davidson said let's say we make an agreement but 36.121 stands. He said someone comes in and draws down our wells. He said in all good faith the groundwater district could go to court and try to protect that. He said as soon as they did that the other lawyer is going to look at 36.121 and say that this groundwater district has no standing and no jurisdiction because the city is exempt. Tom Beard asked if he could give a real quick summary. He said the way it is now you can say that as far as this district is concerned the city wells do not exist with the groundwater district. He said obviously the city wells are a significant part of Brewster County and the city should want to be a part of the groundwater district. Tom Beard asked why the city thought it would be bad to come into the Brewster County Groundwater Conservation District. one of the board members of the BCGCD asked what 36.121 was doing for the city? He said 36.121 says that the BCGCD cannot regulate the city which means we cannot do anything to help the city if anyone gets close to a city well and drills a well. He said the city might be able to pass a city ordinance and keep people from drilling wells within the city limits. He said he did not think that had happened yet. He said most of the wells, the primary wells, are not within the city limits, that the city can control so what does 36.121 do for the city, to protect the city? He said one thing that he heard Chachi mention was the fear of having to pay fees, like the city does have to do with Jeff Davis County. He said the BCGCD does not charge fees. He said it is not in their enabling legislation to charge fees. He said the only thing that is in their enabling legislation to charge fees for is exporting water out of the county. Councilor Gonzales said his understanding is that 36.121 is protecting the city in the sense that it is not allowing people to come in and take water away from us. Chachi asked where he read that in 36.121. Councilor Gonzales said explain it to him then. Tom Beard said this council is looking at this and it is not the council's fault, because two other councils looked at this before this one. He said the council used to have a lawyer who said 36.121 protects the city from the nefarious nasty water district who is really out to control all the water. He said the BCGCD's vision, by law, is really to conserve and protect water, the city's and everybody else's. He said with 36.121 you get nothing. He said yes the city is not subject to the BCGCS rules but they do not have any rules that would discriminate against the city. Virgil said that is what 36.121 says is that the city is not subject to regulation by an

underground water conservation district. Conrad said when you talk about your wells, in 2003, Jeff Davis County, actually got out of 36.121 because they were in there and once they got out of that, then, they were actually able to protect your water, if anyone wanted to drill a well. A board member said they can actually charge you withdrawal fees, which BCGCD cannot charge. Conrad said after Jeff Davis county doing that in 2003, they are now protecting you and now BCGCD wants to do the same in Brewster County with the city wells. Tom Beard said the difference is that Jeff Davis County can and does impose production fees. He said they can charge the city those fees but the BCGCD cannot and they do not want to. He said they could if they got their enabling legislation changed but that is the whole part of this discussion. He said if they did something like that the city would oppose it. Virgil said in answer to why is it important, what is the population of Brewster County, 10,000? He said most of the population that would be protected is right here in the city of Alpine. He said even if the city of Alpine drills a well today, that well is not covered by 36.121. He said he does not see the city drilling a well in the near future but that only covers the existing wells. Tom Beard said a large party of the city water source is not necessarily covered by 36.121 anyway. He said this whole thing does not seem fair to anybody because some of your wells are exempt and some aren't. Chachi asked if that answered some of Julian's questions. Mayor Rangra asked when Tom said it was unfair what that meant. Virgil said he did not say that drawing water was not fair, it was that the city is being treated differently as far as the district is concerned. Tom Beard said he would turn the question around on the city and say why is it fair for the city of Alpine to be treated differently than anybody else, particularly when you get no advantage from it. He said that is what we have been talking about for the last 20 minutes or so. He said there is really nothing that you get out of being exempt from the BCGCD rules. Mayor Rangra said he understood that. Tom said with all things being equal under the law, it's a very good thing. He said he thought someone could make the argument that 36.121 is unconstitutional. Mayor Rangra said his point was about protection, was who was it not fair too. Virgil said everyone else in Brewster County. Mayor Rangra said we have 6,000 people that we serve. He said he is trying to understand who are we hurting and who is being hurt by the city of Alpine's action of drawing water from Sunny Glen. Virgil said nobody said anybody was hurt by that. Mayor Rangra said it is not a question of being fair or not fair. Tom Beard said he could answer Mayor Rangra's question. Tom Beard said it is unfair to the 3,000 residents of Brewster County that do not live in the city. He said they are treated at a distinct difference than you are. He said the city has 6,000 people who are treated preferentially to the 3,000 that aren't. Mayor Rangra said he would come back to that question. He asked how many wells there were in the county that produce more than 25,000 gallons a day. Virgil said 20 not counting the City of Alpine. Mayor Rangra said the City of Alpine has 60% of the population of

the County population and uses only 40% of the water. He said the rest of the people in the county use 60% of the water. He said he is trying to find out what kind of water use the 40% of the people have that use 60% of the water. He asked if the BCGCD had that information. Mayor Rangra asked how many water wells in Brewster County use more than 25,000 gallons per day, since the BCGCD has the data. Virgil said we do not have all the data, but there is about 20, not counting the city. Mayor Rangra said he would like to know how many wells that use 25,000 gallons of water a day are in Terlingua and how many are in Marathon, etc....He said we are sitting here talking to each other and we need to have information of the community so we know. He said the board said we are not being fair and this is just a simple exploratory question. Mayor Rangra said the City is using 480,000 gallons of water a year. Tom Beard said they did not know that. The City Manager said he thought the City had given them that figure. Mayor Rangra said the BCGCD had that information he thought. Tom Beard said they were given a redacted copy of information and everything was blacked out on it. The City Manager said he thought the BCGCD got the information. Conrad said they got the information for the past two years. Tom Beard asked when they got that. Conrad said they got it in February. Councilor Bermudez said the ones that were blacked out were because Cindy said we could not give out that information because they were leased wells. Mayor Rangra said one employee gave the listing and gave all the information without blocking it out. He said we are giving the answers to those questions and we are working with everyone, even though we are not supposed to, he guesses, but that person did that without checking with the supervisor, but that is besides the point. He said the point is that as far as the BCGCD is concerned our water wells do not exist. He said they do because we are giving information. He said he remembers years ago they said they need information about how much water the city water wells are producing. Mayor Rangra said his understanding was that the city has given all the information. Tom Beard said that may be true and he apologized. He said it took five years to get the information but he did not realize that we had gotten the information. Mayor Rangra said no problem. Mayor Rangra said the city would like to make sure that we can, without any problem, have 480,000 a year. He said we have to have that much water, okay? He said we don't want any restrictions from the board on that production of water. He said he thought that we were doing a pretty good job in conserving water and we have new lines. He said as far as conservation is concerned we are working in that direction. He said we are also getting water from the sewer plant and using it to water the country club. He said we need to have also information about the rest of the district. He said you know what we do, we use water to provide it to our citizens. Tom Beard said the information the city wants is public information and if you want it we will give it to you. Councilor Davidson said he sees that the Mayor is using the 60/40 but if you look at Texas numbers, 20% of the water is used for

Municipal and 8% is used for agricultural and irrigation and there is where you get that discrepancy. He said we have ranches that represent a small percent of the population but you are watering 500 cows. Mayor Rangra said if you need water, you need water. Chachi said we may have 20 wells that have the capacity of pumping 25,000 gallons of water but maybe all of them don't actually pump that much so the usage may not be 25,000. She said we do not actually know how many of the 20 are pumping that much water. Mayor Rangra said that is fine. He said his other question is about the monitoring of the water levels. He asked how would we do that. He asked if we would have some sort of electronic gizmo that we would use that is installed inside the well to find out how the water level is going. A board member said a member of the city staff would monitor that. He said they depend on the information that they get to make their decisions. Mayor Rangra said we have no way of finding out if the aquifer that we take our water out of is going dry. Virgil asked if we were referring to where we were taking the water out of. Mayor Rangra said no, he was talking about all of us. Virgil said at this point in time, no. Mayor Rangra said he thought the city had some idea about this. The City Manager said the static and pumping levels? Mayor Rangra said we are not just talking about the city of Alpine. He said we are concerned about the rest of the county. He said Jeff Davis monitors water but Brewster County does not. Virgil said we do not do that. Mayor Rangra asked if BCGCD had plans to do that. Virgil said they do not have the resources. He said their rules dictate what people have to do with the wells and the information that they are supposed to supply to us. He said when he was director of utilities, in the city of Alpine, they went out on a monthly basis and measured the levels of the wells, the static level and the pumping level and knew what the daily pumping amount was and the computer even tells you now. He said that is what is required of other people who have an operating permit. He said it has information in there that they are supposed to supply to us on a regular basis. Mayor Rangra said we do not give that information on a regular basis to the BCGCD? Virgil said not freely. The City Manager said we give them the information on a yearly basis. Virgil said to us? No you don't. Chachi said one time. The City Manager said but you got the static levels, didn't you? Virgil said he has not seen that but the one we got before you could not get any information from it because there was so much blacked out on it. The City Manager said the only information that was blacked out was the name of the well and where it was located. He said you have the last three years updated, right? Tom Beard said the Mayor said we were getting this information on a regular basis but we had to request it many times to get it. Mayor Rangra said he had a suggestion although he could not speak on behalf of the council. He said they mentioned the funding and a taxing entity. He said if we had 3 names on the board as representatives of the City of Alpine and all the entities such as the school and maybe the entities can fund the

board. He said the money that the county provides is tax money too. He said his suggestion is that the makeup of the board be from all the taxing entities and each entity could contribute to the funding of the board. He said in this way we would have more resources to monitor the water. He said all of us have to work together. He said that is just a suggestion, subject to the approval of the council. He said he has not talked to them about this. He said in this way everybody would be receptive and we could have more money to work with. He said we could use that money to monitor the water wells. Conrad said this is something for Commissioner's Court. Mayor Rangra said we are meeting here for one purpose, to throw some ideas out, right? He said some ideas, so we can find common ground. He said he thinks we need to work together. Mayor Rangra said what we would like to do, and this is his opinion, as one member of the council. He said the City Attorney said that the Council is made up of 6 people so he is a member of the council. He said we can reach an agreement. He said let the City of Alpine nominate 3 voting members. Tom Beard said he would oppose these because any of these things would require a change in the enabling legislation. He said if that happened and we were to all agree on a change in the enabling legislation, it would not necessarily have to pass. He said if any of the entities in Brewster County objected to it, and he himself would object to it, because he thinks the system we have right now is fair, it would not pass. He said he thinks his suggestion, although he thinks it is reasonable, is not going to happen. Mayor Rangra said we could talk to our state representative and if the city and county agrees on it, just like 36.121, it is a local issue and we could move forward with it. Tom Beard said he was just one member but he would not support this. He said the BCGCD board uses minimal intrusiveness for a governmental entity. He said if they had \$80,000 instead of \$18,000 they could do all sorts of things, but they do not want to do that. Mayor Rangra said he is not in favor of giving the BCGCD more money, he said do not get him wrong. Chachi said the city of Alpine wants representation on the board. Mayor Rangra said the city of Alpine has a big issue with that. Chachi asked if they had to do that as an elected body or can that be appointed like they exist now. Mayor Rangra said he is saying that the City of Alpine council would make recommendations and it could be anybody. He said they would submit those names to the Commissioner's Court to be voted on. Chachi asked if the board could stay appointed instead of elected. Mayor Rangra said we could leave it appointed instead of elected. Chachi said there are some of us that would not agree to being elected. Chachi said she thought that there was likely a way that we could work this out. Mayor Rangra said 65% of the water conservation boards in the state of Texas are elected. Chachi said again our enabling legislation specifically says where these seven members come from. She said we can look at that and see what that says. She said it also says they are appointed from the Commissioner's Court but if the city served up a list of names to them, she thinks there is a way we could figure

that out. She said if that is an issue. She said if you are okay with it still being appointed and not being elected she thinks we can work that out somehow. She said she thought we could say that we could come to some common ground. She asked if the city was okay with that. Virgil said he agreed, he said the enabling legislation has flexibility. Chachi said she thought we would have to talk to the Commissioner's Court because they appointed all of the board and she thinks they have to be a part of whatever decision they make. The board member said he had one issue that he wanted to bring up that the Mayor mentioned. He said the Mayor said he wanted people from the city of Alpine and they answer to Council. He said if these people serve on this Board (BCGCD), they answer to this board and their responsibility is to this board. Mayor Rangra said the Council can ask their representatives on the board about what is going on, not that the council is telling them what to do. Mayor Rangra said we would not dictate to them. Chachi said they would be your liasons. Conrad said just like the Appraisal District Board. Virgil said that is why the enabling legislation says that someone has to be from the Alpine population and of course we have the at large who could be from the Alpine population and that is two right there. Mayor Rangra said that is different from the City of Alpine making the recommendations. Virgil said he did not disagree. He said they might make recommendations to the County of people that we knew might be willing to serve and if you want to make recommendations for those individuals, he personally does not have a problem with that. Chachi asked if we could pass this one. Mayor Rangra said yes. He asked if the BCGCD was okay with grandfathering the amount of water the city uses. Virgil said no one is trying to limit the amount of water the city is using. Mayor Rangra said we need to have at least that much water. Virgil said the process for someone obtaining an operator permit is to come to the Groundwater District and say how much water they need and the only thing that would make that change is if it was influenced in some way. He said that is not happening. He said God forbid we have another drought. He said in that case we do not know what will happen with water levels. He said we have to go back to what the purpose of this board is. He said the purpose of this board is to conserve groundwater and protect it for citizens of Brewster County which includes the City of Alpine. He said yes you have a need and there is no one on this board who wants to say okay you can do better, why don't you cut it down to 200,000,000 gallons. He said that is not the purpose of this board. He said the purpose of this board is to protect water and one of the main issues is to prevent it from being exported away from here to other water hungry places, which is happening in neighboring counties. He said the City of El Paso right now is pumping water out of neighboring counties back to El Paso. Mayor Rangra said this area does not have enough water for anyone to take water out of. The Board member said think about the City wells, he said the city has attractive wells but a lot of it is protected because you have water rights under a vast area so somebody cannot go

in the middle of that well field and drill. The Mayor said that is what 36.121 is. He said the counties with a population of more than 115,000 cannot take water out of Brewster County. Virgil said that was not true. He said what it says is that counties who meet those population requirements cannot be regulated by a groundwater conservation district. Councilor Davidson said that's it. He said that is all it says. He said that 115,000 is actually city population, the city population that is actually pumping the water. Mayor Rangra said it is for a municipality with a population of 115,000 or less. He said they cannot take water from Alpine. He said if they are more than 115,000 and like they say El Paso has property in Brewster County and there is water in Brewster County. He said El Paso County cannot take water out of Brewster County. Virgil said they can take it but they have to come to the BCGCD to obtain a permit. Mayor Rangra said they cannot take it because they have more than 150,000 population. Tom Beard said you have that backwards. He said if they are not subject to it, they are not subject to it. He said in the City of Alpine, the BCGCD does not know how many exempt wells there are because they are exempt. He said they do not regulate them and they do not register with the BCGCD and they are changing their rules so they can see if they can get the city to at least register their wells so they will have an answer. He said as of now they cannot answer that question because they are not finished. He said they would like to know how many wells the city has that are all protected but he is not sure that they are successful in getting people with exempt wells to register them. He said Pecos groundwater conservation district sent a letter out to all of the landowners in Pecos County saying you have to register your wells and if you do not do it in 60 days we will fine you \$10,000 a day. He said he wrote them back and said come and get me. He said his wells are exempt wells and what part of exempt wells don't you understand. He said they then got reasonable. He said they have no way of answering the Mayor's question. He said he thought the Mayor was trying to show that the City is the big dog and the BCGCD admits that but he cannot tell the city how big of a dog they are, because we do not know how many little dogs there are. He said he thinks that is a thing they would like to know in the future but they do not know it now. He said neither one of us has an action item on our agenda for tonight so let's get to the desires out on the table so that they can take them back and the city can take them back to the table. He said he thought the BCGCD had already told the city what they wanted. He said it was pretty simple. Chachi said she thought the whole underlying thing of this whole conversation is your understanding of 36.121. She said we have to clarify that first before we can go any further. Chachi said if the city is thinking that it is protecting them, it does no more or no less. She said just say that because of the population numbers that are in 36.121, the city of Alpine is not under the jurisdiction of the Brewster County Groundwater Conservation District. She said that is it and it does not say anything else. Tom Beard said that is fair and important and we were talking about El Paso and they can come

in and take water from us. He said they do not fall within the population bracket, they are above it. He said that is not under our control. He said they would have to ask for a permit and BCGCD would have to say yes or no. Virgil said if the city was not under BCGCD jurisdiction and they are affecting the city's wells, the BCGCD cannot protect the city. He said they can deal with production issues with them but there are guidelines in their rules and enabling legislation of what they can do. Tom Beard said as far as the BCGCD is concerned the city wells do not exist. He said if the city of El Paso came in and drilled a well field next to you and you were worried about it, too bad, your wells do not exist. Mayor Rangra said lets use an example that the City of Alpine has 6,000 people and you used the term that the city of Alpine is a big dog. He said not that he is objecting to it but the City of Alpine has 6,000 people. He said we use water. He said our wells are exempted and is he to understand that all the wells in the county are exempted. He said he asked about the wells in the county and how many wells are capable of pumping 25,000 gallons of water a day. He said we have wells that we use for the city of Alpine and those are exempted under this 36.121. Tom Beard said the wells themselves are not exempt. He said because the City of Alpine falls within those brackets, the City of Alpine is exempt. Mayor Rangra said the city is exempt but not the wells. He said he is trying to understand because he used the terms the wells are exempted. Chachi said in water code terminology there is an exempt well and a non-exempt well. She said a non-exempt well pumps more than 25,000 gallons. She said an exempt well is anything under that. She said when they say exempt wells, that is what they are talking about. Mayor Rangra said he is not arguing for the sake of arguing. He said his question was how many water wells there were in the county that used more than 25,000 gallons of water a day. Mayor Rangra said you said you had no idea. Chachi said they said approximately 20 because that would be classified as a non-exempt well. Mayor Rangra asked if that included the wells in the City of Alpine and they said no. Chachi said she thought what they said was that they had no idea of how many exempt wells they had. She said they have no idea of how many exempt wells they have, it would be in the thousands. Mayor Rangra asked about future BCGCD Boards. Virgil said as far as what. Mayor Rangra said as far as letting the City of Alpine pump 480 gallons of water. Virgil said there are strict guidelines in their rules and in their enabling legislation of what they have to do before they can limit production. Tom Beard said there are limitations as to what a future board can do or cannot do. He said they cannot tie the hands of future boards. He said if the Mayor is asking what can be done to control future boards they cannot do that. He said for them to be answer their question and say that a future board might do something that they do not like, they cannot do that. He said they would have to object at that time. Chachi said we also do not know what the state of Texas is going to say down the road. She said the whole water situation is only going to become more and more complicated

and regulated. She said we cannot say what future boards are going to do and also cannot say what the state of Texas and the Water Planning Board is going to say. She said they do not know what the legislation moving forward is going to do. She said she does not think they can give a fair answer on that. Tom Beard said the City of Alpine bought a section of land from Bob Corkins and kept the water but sold the land. He asked if the City of Alpine could obligate future City Councils to do that. He said as a real estate matter you could but as far as a regulatory matter our conclusion was that you could not do that. He said he had been thinking about that for 40 years. Virgil asked when we bought this Bob Corkin Property. Mayor Rangra said he was familiar with all these problems. He said Tom Beard and he both knew about that history. He said there was a lawsuit and Tom Beard was familiar with that and he read all of that. He said there was a reason he filed and Tom knew that too. He said that is a different issue. He said this BCGCD Board cannot commit future boards. He said when the council makes a decision it is going to commit the future of the council to whatever it does. He said it is a one sided deal. He said the next board comes in and says they do not agree with what the old board said. Tom Beard asked if when the next council comes in they would want to do something different from what this council was doing. Mayor Rangra said once this is done, you cannot bring 36.121 back. He said we are making a decision for the future. He said the BCGCD board says they cannot speak for the future boards but they are asking this council to make a decision that will bind future councils. Tom Beard said he did not understand the Mayor's logic. Councilor Davidson said that is a decision that will protect the municipal water for the future or leave it unprotected. The board member said what is 36.121 doing for us. He said he thought that might answer the question. Virgil asked City Attorney John Armstrong what his interpretation was of 36.121. The City Attorney said he really was not smart enough to think in specific terms on this issue. He said he knows that it indicates that wells are exempt from regulation within certain bracketed areas. He said and obviously the city of Alpine falls within that bracketed area. He said wells are exempt from regulation. Virgil said within a certain time frame and the organization of this particular groundwater district. City Attorney Armstrong said he really does not want to take over this meeting with his legal interpretations. Virgil said he just wanted his thoughts. He asked if it addressed anything else. City Attorney Armstrong said not that he is aware of. Virgil said he is not an attorney but in his opinion that is all it concerns. He said he did not see any protection for the city of Alpine. Chachi said again that is the underlying issue here. She said the city believes that 36.121 gives you protection and the BCGCD believes it doesn't. She said unless we get past that...she said she doesn't know that we have that far to go. Virgil said right now because of the past drought, the legislature is taking up several issues dealing with water and they may very well deal with this back at the state level. He said if it were at the local level

and if we have control at least it is going to be taken care of here and not by somebody somewhere else that may say be in Austin that wants the water, like El Paso or Midland. Mayor Rangra said he thought that he raised a very good question. He said he also the thinks the state may do away with 36.121. Virgil said they might. Mayor Rangra said it is possible, so if the state does that, we the City of Alpine will come to a resolution of this issue. He said so why are we going to have to worry about arguing back and forth. He said the state may do it this session. He said all the board wants to do is get their information in terms of how much water we are pumping out and see if we are conserving water. Virgil said what they are charged with is predicting desired future conditions. He said there are a whole bunch of terms that they have been dealing with for years. He said that is what we have to do. He said they have to have that information so they can, if it ever came to restricting anybody from using water out of our aquifer, we have to have information to do that. He said that is what this is all about. Mayor Rangra asked what aquifer we were talking about, in the Sunny Glen area? He said it is all igneous and there is no aquifer there. Councilor Davidson said the Water Development Board lists it as a minor aquifer and they call it the igneous aquifer and they have run models on it. He said there are not enough wells on it to really get an accurate model. Virgil said that is one of the issues in our county. He said we are so sparsely populated and we have very little information. He said even the Water Development Board doesn't have a lot of information. He said the more information we can get is going to help us predict and come up with some of the issues that we are charged to come up with. He said for example these are our future conditions and at what point do we declare an emergency. He said we may have to go into some mandatory rationing. He said if you have ever managed a drought management plan, that drought management plan is basically the same thing, except it is handled with the TCEQ and that is something that you are required to do. He said if certain things are triggered, and he does not know what the city's management plan says, but the only way you can trigger it on groundwater is going to be water levels, static levels and something like that. He said and then you have to start initiating certain water conservation management practices already and you have a management plan that dictates that. Tom Beard said the states prefer groundwater districts for groundwater management and if we are complacent in that, and don't do a good job, the state will come in and do it themselves so he does not think any of your city of Alpine wants the state to come in and take a look. He said you guys are so bad you could not even get 40% of the water to be a part of your district. Councilor Davidson said he just wanted to make a point. He said in any case if that were to happen, he was keeping up. He said one reason two years of data does not work plus 2011 was fairly anonymous. He said he meant it did rain for 300 days. He said during that summer, multiple days in a row we were pumping more than 2,500,000 gallons per day. He said those were the numbers Cindy gave him that she

had and they were watching those pumping levels and putting them down on their board. He said if you take 2.7 million gallons divided by 6,000 people and that is over 400 gallons per capita per day. He said you come in and compare that to El Paso that is about 155 gallons per day. He said San Antonio is about 108. He said why do they need to assume about the City of Alpine if some state regulatory board comes in. He said of course we know it is dry and we have to keep our plants watered but it does not look like water conservation and he is not making any judgment on that but those were the numbers. Mayor Rangra asked if that was the average. Councilor Davidson said he did not know what our annual average was but it is much higher than a lot of cities. He said bigger cities have more resources. Councilor Gonzales said he thought what the Mayor was asking for was an average of what we use over all. He said he was sure we always had peak moments when we used a lot of water but the average is usually what they look at. Councilor Davidson said right, and he was just saying that was 450 gallons per day but the City of Alpine only averages probably around 300 gallons which is double the amount in El Paso. Councilor Gonzales said you also get a rainy day when you don't need to water and it lowers the rate. Councilor Davidson said the annual average is probably in excess of 300 gallons per day. Councilor Gonzales said it is also possible that the average is not that high and we are not using that much water. Councilor Gonzales said people want to keep their plants alive and he can understand that. Councilor Davidson said in some cities people do not get to keep their plants alive. Chachi said they are saying that the average is around 300 gallons per day. Councilor Gonzales said there are also the leaks and stuff that we are dealing with and the fact that they are using water to put out fires and he could go on with other examples. Councilor Davidson said all cities have that and if you get your leaks under 10% that is good nationwide. Chachi said we have not really talked about the fee situation if you are concerned about that. She asked if they had adequately addressed that or if they needed to talk some more about that. Councilor Gonzales said if he heard correctly, right now they are saying no fees, but they do not have control over other boards that have the ability to be able to do that and change their minds and say okay we are going to do it or the state to come in and say okay we need to start charging a fee. He said he is saying what they are saying that there is a possibility of that. He said what they are saying is that they will not be able to tell a future board what they are going to do or what their limits are and if that does not happen what is the point of the offer. Tom Beard said he was not sure that they finished that discussion with the Mayor. He said you cannot bind the future city council at all. Councilor Gonzales said what you are saying is that there could be a possibility of a fee at a future time. Chachi said they are talking about changing enabling legislation. Virgil said we cannot do that because of our enabling legislation. He said a future board cannot change that unless they change the enabling legislation by the state of Texas. He said the only fee they can charge at this point is an export fee

which is exporting out of this county. He said there is no structure for them to charge a fee. He said a permit is the only thing and that is an every two year thing and it is a small fee. Tom Beard said the City is paying production fees for the water that they are pumping out of Jeff Davis County and the BCGCD cannot change that. Mayor Rangra said it is 16,000 gallons. Virgil said it is so much per thousand gallons and he does not know exactly how much it is but they are paying that fee to transport water out of Jeff Davis County. He said they do not have a fee and they cannot change that as a board. He said he guarantees future boards cannot put a production fee on the city because it is not in their enabling legislation. He said it has to be changed in Austin to do that. The board member had a copy of the enabling legislation and he handed out a copy to the council. He said it tells you what the BCGCD can and can't do. He said they also have their rules which are their tools in dealing with gathering information and things like that. He said the only fee they can charge is a drilling permit fee and a production permit fee and that fee is a one time every two years and it currently is \$100 per well. He said that is the only fees we can charge right now. He said those are a very small, very minor amount of money that they get. Chachi said they got \$1,500 for a drilling permit last year. Mayor Rangra said Tom said something about the future board cannot be forced to agree with what we are agreeing to today, right? Tom Beard said right. Mayor Rangra asked what it was that a future board would do with the decision we make today. Virgil said let's say the state legislature does away with 36.121. He said the rules or enforcement may be different. Mayor Rangra said that is a different thing. He said he is talking about the future of the BCGCD board tomorrow, next year or the year after. He asked what it could do different from what this board is going to do today. Tom Beard said if we ever make that contract in the future, the water board could aggregate the contract with the city council and conversely the city council could aggregate the contract with the water board. Mayor Rangra said the difference is Tom that the water district board is appointed and the city council is elected and if the city council starts changing its views, people will start throwing rocks. Chachi said changes like the city is talking about don't happen even if the board 10 years from now decided to do something they would have to get, number one the senator and legislator to introduce legislation that changes the enabling legislation. Tom Beard said that is not what Mayor Rangra is asking. He said within those parameters, he thinks, when we don't change our legislation, what could a future board do to adversely affect the city. Tom Beard said his answer to that is that we could redo the deal. He said one or the other of us could bring it back to the starting point and that is not a bad thing. Virgil said he guessed where he was stymied was these are not issues because we do not charge fees and we can't with the makeup that we are currently at and it is not something the board can vote to change. He said where the city can vote to raise taxes, the BCGCD can't. He said they cannot raise their fees and the only fee that they deal

with is permit fees. He said the awful thing would be if it was a thousand dollar permit fee. He said you would be mad about that and the Commissioner's would be mad and fire the BCGCD board. He said they can't do that. Tom Beard said we can't do that because the statute says that the fees have to be reasonably related to the expenses of administering the district. Councilor Gonzales said he thinks again he would like to define 36.121. He said he thinks that if he were to ask anyone here it would be biased. He said he would not mind looking at that. Chachi said she really believes that is the underlying issue here, your interpretation and ours. Councilor Davidson said Robert Steele had some background in oil and gas. He said he did not know if to trust him. He said he was one of their advocates for city attorney. Councilor Davidson said he seems like a reasonable guy. Mayor Rangra said he thinks we have accomplished a lot here and it was very productive. Mayor Rangra said he does not think we have to have an elected body as long as we have a representative body. Tom Beard said he believed the city made their wishes clear to the BCGCD. Mayor Rangra said we have an understanding. He said we can't say we agree because the Council has to make the decision. Mayor Rangra said maybe we could contact some Commissioner's and see what they think about our ideas and then talk with the Council and see what they think about it . Tom Beard said we could each write a letter to each other and say at the minimum we want this. Mayor Rangra said we can take a look at these minutes and see what we talked about. He said he thinks we accomplished a lot. Councilor Davidson said to facilitate the communication maybe we could have our overworked City Attorney to get with Conrad and the Mayor and verbalize some of the representation issues and help craft that. Councilor Davidson said meanwhile perhaps we will plan another meeting after the communication. Mayor Rangra said Councilor Davidson did not expect everything to be settled today. Councilor Davidson said no, no. He said after if there is something we can look at, maybe a list of bullet points or whatever, we could reconvene this meeting agenda. Chachi said after you get your opinion of 36.121, if you could share that with us. She said she thought it was fair for them to know what the city found out. Councilor Gonzales said he had a question. He asked why they were waiting until the last minute to try to do an interlocal agreement. He said we have had two years where we could have met and talked about this before. He asked why did we wait until now. Tom Beard said we did, but it was voted down. Councilor Gonzales said he understood that but from then until now we could have gotten together and said let's try to work something out. Tom Beard asked why the city had not brought it up before now. Councilor Davidson said we started this conversation back up in December and that is when we brought it up to the Council to have the intent to bring these meetings together and this is our second meeting. Councilor Davidson said he agreed with him and whatever agreement that we come up with, let's have an ongoing relationship, regardless of whether he is on this board or that

board, he said it is healthy to have communication and we all need to learn that water is the mother of everything. He said there is nothing without water. Councilor Gonzales said he believes in that too. He said water is very important. He said that is why he does not want to jump into anything until he really understands it because he is not just representing himself, or the city, he is representing the constituents and he wants to do the right thing by them. Chachi said they were in the same position. Councilor Gonzales said he understands. Chachi said she knew the Council thought they were just a board but that does carry a responsibility. Councilor Gonzales said he was not thinking anything except that we should have been talking about this a lot earlier and that is what he is saying. He said the fact that they voted it down as one city council, why not talk to the other city council. Chachi said that is again water under the bridge at this point. Councilor Gonzales said that was sad. Mayor Rangra said we accomplished a lot at this meeting and we can meet again next week or something like that and take it from there. He said he does not have a problem as long as they do not meet in the morning. He said he has classes in the morning. Tom Beard said tell him when you want to meet and they will meet. Councilor Davidson said he did appreciate the good atmosphere here. Chachi said just so everyone is clear with their homework, the city will get with a third party and get an opinion on what 36.121 says and they will let the BCGCD know what that is. She said both sides are going to put together the things that are concerning to us and they can trade that information and have time to work on it so that they come to the next meeting with some answers. She said maybe it's not next week because there is some work to be done. Tape ran out.

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. Citizens Comments (limit 3 minutes) – none
11. Council Member's Comments and Answers – none
12. Executive Session – none
20. Action – Executive Session – none
21. Adjournment – Meeting was adjourned.

I certify that this notice was posted at 5:20 P.M. on March 11th, 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 5:20 P.M on March 11th, 2013, and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Margaret "Molly" Taylor, City Secretary