

Preserve Our Water, Inc.
P.O. Box 946
Blanco, Texas 78606
www.preserveourwater.org

June 7, 2007

Neill Binford
Precinct 4 Director
Blanco-Pedernales Groundwater Conservation District
1363 Logan's Way
Blanco, TX 78633

Mr. Binford,

This letter presents a series of questions having to do with two reports presented to the B-PGCD Board during its February, 2007 meeting by General Manager Fieseler. It also raises questions regarding a report presented to the Board by Mrs. Shirley Beck during that same meeting. We trust that you will make the necessary inquiries and provide a reply as your schedule permits.

Mr. Fieseler presented two reports to the Board in the context of explaining and justifying his decision to renew – without the promised Public Hearing - the 185,000,000 gallon production permit initially granted Rancho del Lago, Inc. on March 16th, 2006. One report addressed an investigation that Mr. Fieseler conducted in response to a complaint lodged by citizens living in Landon's Crossing about a rupture in the watering system installed on the golf driving range under development at the Rockin' J. The second report provided information about his observations regarding the subdivision and its water use under the permit. Preserve Our Water finds both of these reports flawed, the investigative processes used inadequate and incomplete and, in the case of the report regarding the leak, extraordinarily tardy.

July, 2006 Rockin' J Watering System Leak

Mr. Fieseler's report was dated July 25th, 2006. However, it was presented to the Board at the February, 2007, presumably for the first time.

1. Had this report been previously, formally presented to the Board? If not, why the 7 month delay?

Mr. Jack Twilley and Ms Lynne McKirdy are listed in the report as the complaining citizens.

2. Why did neither of these citizens ever receive a copy of this report regarding the complaint they lodged with the District?

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The opening paragraph begins with the statement “Lynne McKirdy and Jack Twilley reported that they had trespassed on Rockin’ J Ranch and observed a break.”

3. Did Mr. Fieseler inquire about the circumstances of this trespass? If so, who did he interview regarding that matter? Specifically, did Mr. Fieseler interview Sheriff’s Deputy Fox regarding this trespass? Was Deputy Fox contacted at all, as the investigating law enforcement officer? If any such interviews were conducted, why is no reference made to those discussions in Mr. Fieseler’s report?

Under “Other Comments” Mr. Fieseler makes reference to an unnamed Sheriff’s Deputy and attributes to him certain comments regarding the magnitude of the leak. He also attributes comments to J. R. Newman regarding the nature of the leak and regarding there being no leak at 5:00 PM.

4. Upon whose report is Mr. Fieseler relying as pertains to the conversation between the unnamed Deputy and Mr. Newman? Did Mr. Fieseler inquire of Mr. Newman how he knew at the time of this reported conversation that the leak was a broken sprinkler head? How does that knowledge square with the reported comment that at 5:00 PM Mr. Newman saw no evidence of a leak? If such an inquiry was made, why was the result not documented, as the two statements appear contradictory on their face? The statement attributed to Mr. Newman suggests he did have knowledge of the leak yet chose to take no action because it was “only” a sprinkler head; did Mr. Fieseler inquire as to what threshold of leak – and resulting groundwater waste – would have spurred Mr. Newman to action?

Ms McKirdy stated at the July 20th B-PGCD Board meeting that she called Mr. Newman at about 6:30 PM. She reported that Mr. Newman stated at that time there was no leak, that the water running off of the Rockin’ J property was “normal run-off from watering operations.” Under “District Actions” Mr. Fieseler states that he “observed tail-water runoff from the areas currently being irrigated. ... I observed that runoff from the leaking spray irrigation head had joined with the other runoff, passed through a silt fence, and subsequently flowed into the pond owned by Mr. [Alan] Broxton.”

Paragraph 5 of the B-PGCD definition of waste reads:

“Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26 “Water Quality Control”.”

5. Did Mr. Fieseler make inquiries regarding Mr. Newman’s statement to Ms KcKirdy that the runoff she reported was “normal” in consideration of the fact that such a

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statement is de facto admission of willful waste under the definition of waste adopted by the Board? If such inquiries were made, why were they not reported? Mr. Fieseler documents evidence of earlier runoff, which he attributes to irrigation operations; did he inquire about this earlier, prohibited runoff? If so, with whom did he speak and what were the results of those inquiries? If he did not inquire into the acknowledgement and evidence of prior, prohibited waste; why not?

Mr. Fieseler documents that Mr. Newman reported an “understanding” with Mr. Alan Broxton arising from earlier runoff from the Rockin’ J onto Mr. Broxton’s property. He also reports being told that the Rockin’ J had assisted Mr. Broxton with establishing grass in the area of runoff to control erosion.

Subsequent to the release of this report, Preserve Our Water contacted Mr. Broxton, made a site visit to his property and engaged in a lengthy discussion of his experiences with the Rockin’ J. Mr. Broxton reported – and has readily agreed to document – those experiences. He denied having reached any “understanding” with the Rockin’ J regarding runoff from their property onto his. He further reported no assistance in establishing grass cover, though he did report that some dirt had been provided by the Rockin’ J to replace that lost to erosion resulting from runoff from the driving range. He also stated that he had never been contacted by Mr. Fieseler regarding this matter.

6. Did Mr. Fieseler at any time contact Mr. Broxton, contrary to Mr. Broxton’s report? If not, why not?

In his discussion of the volume of water lost during the leak, Mr. Fieseler produces a calculation of “no more than 21,000 gallons” of water. He observes that the amount may actually be less due to a computer system designed to cutoff water flow in the event of a sudden drop in pressure.

7. Why is the volume of water wasted, as defined by District rules, of concern since those rules make no distinctions about magnitude in defining waste? Did Mr. Fieseler include this calculation seeking to discredit the citizens who made the complaint? He bases this calculation on an assumption of 7 hours at 50 GPM; what is the basis for that duration? Is the basis Mr. Newman’s assertion that at 5:00 PM he saw no evidence of a leak? If so, what steps did Mr. Fieseler take to validate that the leak began at that time? Wasn’t there reason to believe it might have occurred earlier, such as the reports of Ms McKirdy? What is the basis for the flow rate assumption?

Mr. Fieseler concludes by reporting “All water loss was clearly unintentional.” And then, “I observe no violation of District rules.”

8. How does intent come into play in assessing a violation of provisions prohibiting waste, given the language of that provision, cited above? How is this conclusion

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supported by the statement made by Mr. Newman and evidence reported by Mr. Fieseler of earlier runoff from the property attributed to irrigation operations? How does the conclusion that the loss of water was unintentional – whether pertinent or not - square with the comments attributed to Mr. Newman in the earlier parts of the report regarding prior run-off? How is a loss accidental when it is ignored for, as Mr. Fieseler speculates, “5-7 hours? If Mr. Newman was behaving in a responsible manner, as Mr. Fieseler suggests, why did it require law enforcement intervention to spur him to action? Why does Mr. Fieseler not report that fact?

Report of Groundwater Waste by Mrs. Shirley Beck

In the course of Public Comments at the February B-PGCD meeting, Mrs. Shirley Beck presented written and oral comments regarding repeated instances of significant runoff from golf course irrigation near her property. She also delivered photographs taken at two different times of this runoff from the golf course. She asked that the matter be investigated and cited the continuing, willful violation of District prohibitions against groundwater waste as reason to withhold renewal of the water production permit issued to the Rockin’ J until such time as they were able to demonstrate that effective, preventive measures had been instituted. Mrs. Beck clearly stated that her concerns arose both from the repeated and, at the time, ongoing violations and from the effect that runoff was having on the much researched White Spring located on her property.

Has the B-BGCD initiated or completed an investigation of this complaint? If not, why not? If an investigation has been conducted, where is the report of that investigation and why has Mrs. Beck not received a copy? Is there a special form or procedure not documented in the District rules that is required for instigating a complaint investigation? Are there criteria, also undocumented, regarding severity of an alleged violation that must be met before an investigation is undertaken? If so, what are those explicit criteria and where may they be found? Is four months an unreasonably short period of time to expect such an investigation to be initiated? Would a reasonable person conclude that irrigation operations at one hole of a golf course resulting in prohibited waste suggest the need to examine other locations under irrigation located near adjacent property?

Memorandum to B-PGCD Board; Subject “Rockin’ J Ranch Subdivision Operating Permit Renewal

In the first of Mr. Fieseler’s “Observations” in support of his decision to renew the permit issued to Rancho del Lago, Inc., he notes that the Rockin’ J has granted access to pump houses and allowed pump testing and observations “weather permitting.”

1. Given the nature of the permit issued to the developers of the Rockin’ J, stipulating “additional study” during the one year permit period, what is remarkable about this behavior? What does the phrase “weather permitting” refer to – Blanco County having

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been in Extreme to Extraordinary Drought conditions throughout the permit period (as reported by the US Drought Monitor)?

In observation 5 Mr. Fieseler again raises the issue of the volume of water wasted during the leak event in July.

2. What is the relevance of this statement regarding violation of District rules – given Mr. Fieseler’s previous assertion no violation of District rules had occurred during the permit period?

In observation number 6 Mr. Fieseler reports the willingness of the Rockin’ J owner to allow “field trips” to the property.

3. What is the relevance of this observation to the renewal of the permit?

In observation 7 Mr. Fieseler notes compliance “to the extent possible” with B-PGCD drought restrictions. He further cites examples of restricted daytime watering and delays in planting additional areas of the golf course.

4. What does the phrase “extent possible” mean? On what basis does Mr. Fieseler claim a reduction in daytime watering? Did Mr. Fieseler contact nearby neighbors to verify the times and duration of watering or rely solely on the reports of the developer? What is Mr. Fieseler’s basis for attributing the delay in planting of addition areas to drought restriction compliance? Did he consider and then eliminate other, business related reasons for that decision? If so, what was his basis for elimination of those reasons?

In observation 8 Mr. Fieseler reports that the developers “voluntarily” equipped two of their wells with meters. The manner in which the information is presented suggests this action was taken solely for the benefit of the B-PGCD and its efforts to monitor the permittee’s water use.

5. What is Mr. Fieseler’s basis for drawing the conclusion implied? Did he consider that the operators of a public water supply might wish to meter their production wells?

In observation 9 Mr. Fieseler reports that the permittee produced 73 millions gallons during the 11 month period of the permit.

6. In observation 13 it is stated that the permittee produced 71 million gallons; which figure is accurate? Does Mr. Fieseler consider 2 million gallons of water to be trivial?

Observations 10 and 11 deal with aquifer levels as monitored during the period and during a pump test. In those observations Mr. Fieseler uses the term “minimal” and “not dramatic”.

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7. Why does Mr. Fieseler not report the concerned calls from nearby well owners, both within and nearby to the Rockin' J? Why does Mr. Fieseler not report what those well owners have reported to Preserve Our Water, namely that Mr. Fieseler told those well owners that the problems with water quality or well levels was due entirely to the drought and unrelated to the production of 71 (or 73) million gallons of water by the Rockin' J? Given that in at least one instance the well owner was told that the burden of proof lay with the affected well owner to demonstrate that the Rockin' J's pumping caused or contributed to their problem, what is the basis for Mr. Fieseler's position? If that position is based on his assertion of a standard ¼ "cone of influence" throughout the county, what is the scientific basis for that assertion?

The Purpose section (1.2) of the B-PGCD rules states, in part, that the District's purpose includes:

"... preserve historic use of groundwater ..."

Additionally, the August 2006 study commissioned by the Hays/Trinity GCD, "Dry Wells in Hays County: Is the Culprit Drought or Development?" concludes that wells located near high density residential areas are affected disproportionately during drought by the heavy pumping.

Given the bias demanded toward the historic users by the District rules and empirical evidence concerning the same aquifer, developed by a qualified hydrologist, how does Mr. Fieseler justify his statements to those historic users located nearby new, heavy production well(s)? Has Mr. Fieseler read the Hays/Trinity report? Does he have a scientific basis for rejecting its findings? If so, what is that scientific basis?

Mr. Fieseler reports in observation 13 that the permittee intends to use less than the permitted amount over the 3 year period of the renewed permit. He characterizes this as a "voluntary" action on the part of Rancho del Lago.

8. Approximately 71 million gallons of water per year are required to maintain an **established** golf course in Texas, so with that volume of production as a baseline for years two and beyond (year one being required to establish the second half of the course at significantly higher use rates), what actions by Rockin' J accounts for this "voluntary" restriction in use? Given the rate at which the development is currently being "built out", isn't it a reasonable assumption that the projected, graduated increases in water use reflects anticipated addition of residences to the development with associated demand for water? What is Mr. Fieseler's motivation for this apparently slanted characterization?

Observation 14 again relates to the lack of impact on adjacent well owners arising from production at the Rockin' J.

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9. Why does Mr. Fieseler fail to inform the Board and interested citizens regarding the calls of concern he received? Why does he not at this juncture explain, for the record, his justification for telling those historic users that their well problems are solely a result of the drought? Why does he not document for the record his policy of assigning burden of proof to the historic user in such cases?

Conclusion

Until Mr. Fieseler can satisfactorily answer these questions, it is impossible to avoid the conclusion that a strong bias is present as pertains to the oversight and management of this historically significant operating permit. To the extent to which the indications of such a bias cannot be satisfactorily explained or eliminated, it seems that the citizens of Blanco County cannot expect proper supervision of this permit so long as the sole source of all investigation, oversight and enforcement remains in the hands of one apparently having such a bias. Moreover, to the extent that this apparent bias in favor of development interests and at the expense of historic users persists, it is unclear how the citizens and taxpayers of this county can expect independent and competent investigation, oversight and supervision of any operating permit granted to a developer.

We await the pleasure of your response.

On behalf of the Board of Directors of Preserve Our Water, I am, respectfully,

David A. Collins
President, Preserve Our Water, Inc.
pow@moment.net
830-868-9055

CC: Shirley Beck
Jack Twilley
John Watson