

Middle Pecos Groundwater Conservation District
Minutes of May 19, 2015

On this the 19th of May, 2015, a regular board meeting and public hearings were held by the Middle Pecos Groundwater Conservation District in the office located at 405 North Spring Drive, Fort Stockton, Texas, with the following members present, to-wit:

Jerry McGuairt	President, Precinct 1
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
John Dorris	Vice President, Precinct 3
Janet Groth	Precinct 1
Merrell Daggett	Precinct 2 (Appointed 04-21-2015)
Ronald Cooper	Precinct 4
Terry Whigham	Pecos County – At Large

Quorum Present.

Board member(s) absent: Weldon Blackwelder, Vanessa Cardwell, Jeffery McMahon and Alvaro Mandujano, Jr.

Others present: Paul Weatherby, Mike Gershon, Raymond Straub, Gail Reeves, Ty Edwards, Harvey Gray, Melissa Mills, Darrell Peckham, Brock Thompson, Jeff Williams, Edmond (Eddie) McCarthy, III, Tim George, Homer Mills, James Cravens, Gil Van Deventer, Gene Lyda, Shay Lyda, Frank Urias, Tommy Ervin, David Mitchell, Michael McCulloch, Aaron Boese, Corey Paul, Glenn Honaker, Ernest Woodward, and Bob Beal/Fort Stockton Pioneer.

**SHOW CAUSE HEARING ON ALLEGED VIOLATION OF DISTRICT'S
RULES BY BUGINGTON ENERGY, LLC**

- I Call to Order at 10:07 a.m.

- II Show Cause Hearing on alleged violations of District's Rules 14.1(d), 14.2(a) and (c), and 14.3(a)-(c) pertaining to waste, pollution and degradation of quality of groundwater by **BUGINGTON ENERGY, LLC**.

Bugington Energy, LLC, did not have any of their company officers or employees in attendance at the hearing.

Bugington Energy, LLC, was represented by Tim George of McGinnis Lochridge law firm. He stated that his appearance is without waiver and respectfully subject to the May 15, 2015 letter that his firm sent with regard to the jurisdictional issue of whether or not the District has the statutory authority from the legislature to regulate this oil and gas matter. He is not participating in today's hearing. He will be available to provide the Board with basic information by way of cooperation.

In the May 15th letter, Mr. Carl Galant with McGinnis Lochridge requested that the District cancel the hearing and enforcement action, and that if the hearing is not cancelled, that Bugington does not intend to participate in the hearing. Bugington denies the allegation in the *Notice of Show Cause Hearing*, and intends to be cooperative, but does not, and will not, waive its position that the hearing and enforcement action are unlawful.

An Executive Session was called at 10:11 a.m. by President Jerry McGuairt pursuant to the Texas Open Meetings Act, Sections 551.071 of the Texas Government Code, to consult with attorney.

John Dorris arrived at 10:15 a.m. and joined the Executive Session.

The executive session ended at 10:41 p.m. The Board reconvened the open session. President McGuairt stated that no decisions or votes were made in executive session.

President McGuairt announced that MPGCD will take jurisdiction over the Bugington Energy, LLC, matter. The following were sworn in: Paul Weatherby, Ty Edwards, and Raymond Straub.

Paul Weatherby proceeded with a power point presentation to show the spills that were found and the possible sites for water contamination, and information that has been gathered from the Texas Railroad Commission showing violations.

Allan R. Standen, a Professional Geoscientist and Hydrogeologist representing MPGCD, examined the potential for groundwater contamination from produced water and oil at two Bugington well sites.

- His report is attached to the minutes as "Attachment 1".
- Water level data was collected in the vicinity of the leaking wells.
- The groundwater flow direction is determined to be north by northeast towards the Pecos River.
- The depth to the water table in the vicinity of the Bugington wells is estimated to be approximately 30 feet.
- Soil properties data were obtained from the National Cooperative Soil Survey to compile soil types to understand cementation, infiltration rate and saturated hydraulic conductivity.
- The combination of these two data sets (depth to water and soil properties) allows for the calculation of the estimated time for surface water contamination to reach the water table.
- The leak is estimated at 3 gallons per minute (gpm) or equivalent to 4,320 gallons per day.
- The measured chloride content of the leaking water has been measured at 54,000 part per million (ppm).

- The data presented in Mr. Standen's report supports that produced water from the Bugington Tank Battery Well #4 well and the other well(s) would reach the underlying water table at 30 feet below land surface in a minimum of approximately 12 days and a maximum of approximately 26 days under saturated conditions.

Raymond L. Straub Jr., a Professional Geoscientist with the Straub Corporation, has been hired by MPGCD to find the best possible practices to assess the environmental impact, both vertically and horizontally, at the spill sites and to guide the District through the investigation process. Raymond assisted with the letter sent to Bugington Energy on April 24, 2015. He also assisted with the initial 45 day time frame that will be given to Bugington Energy to have the site clean-up complete with soil and water analysis complete as proof of the environmental clean-up.

Raymond L. Straub Jr., recommends observing the steps taken by the Texas Railroad Commission and for MPGCD to follow suit.

The Bugington Energy show cause hearing on alleged violations of District's Rules 14.1(d), 14.2(a) and (c), and 14.3(a)-(c) pertaining to waste, pollution and degradation of quality of groundwater will continue on July 21, 2015 at 10 a.m. at the office of MPGCD. The time frame for the next step will depend on the outcome of the results of the 1st 45-day phase.

Janet Groth made a motion to enter an order effective today that requires Bugington Energy, LLC, to submit to the MPGCD (District) a work plan prepared by a competent personnel licensed with the Texas Board of Professional Geoscientists where the work plan requires the identification of constituents of concern and evaluation including excavation, soil borings or otherwise to determine the lateral and vertical extent of those constituents of concern within 45 days. The motion was seconded by Merrell Daggett. Motion carried without objection or abstention.

- III Consider and act on **alleged violations by BUGINGTON ENERGY, LLC**, and consider and act on appropriate penalty or other enforcement remedy to be imposed and/or pursued in court.

No action taken. Hearing will be continued on July 21, 2015, at 10 a.m. at the office of MPGCD.

- IV Adjourn: Hearing will be continued on July 21, 2015, at 10 a.m. at the office of MPGCD. Today's time is 10:53 a.m. when continued.

PRODUCTION PERMIT HEARING for AARON & HEATHER BOESE.

I Call to order at 11:45 a.m. by President McGuairt.

The application requests 800 acre feet/year from the Edwards Trinity Aquifer for a 2 well system located on T&P RR CO Block 48-9 Section 30 approximately 6 miles North of I-10 and Kennedy Rd, in Pecos County, Texas. The purpose of this well system is for Industrial Use.

Party representing application: Aaron Boese

Protestant to application: None

Public comment: Harvey Gray, Pecos County WCID#1 Board President
Frank Urias, Pecos County WCID#1 Manager

Ty Edwards presented the application to the Board. This farm is leased by the City of Fort Stockton and has "Historic and Existing Use" production permits totaling 6,883 acre feet for a 5 well system (Wells 1 – 5) for irrigation use. They are growing cotton and chili's and currently use approximately 1,800 acre feet for the farming operation. This permit is requesting 800 acre feet for a 2 well system (Well 1 and 2) for industrial use from the Edwards Trinity aquifer. The water will be used for oil and gas fracking for Samson Exploration and they have 9 new horizontal drilling permits approved by the Texas Railroad Commission in Pecos County. The application is administratively complete.

Harvey Gray, Pecos County WCID#1 Board President, the well field for PCWCID#1 is nearby. We are not protesting the application at this time. Our wells are closely monitored, and as long as the frac water pumping doesn't affect our water wells we do not object to the permit application.

Frank Urias, Pecos County WCID#1 Manager, voiced concern over the amount of water that is being requested because they have 3 wells in the same area.

Aaron Boese was sworn in. He has owned the property for 8 years. 600 acres are consistently farmed and they use about 1,800 acre feet of water annually. Samson Exploration would like to use the water from these 2 wells to fill frac ponds for 2 oil wells. All five water wells are properly registered.

Several board members were concerned that the Section of land has 6,883 acre feet of production permits for irrigation, and it seems excessive to add 800 acre feet of additional permit. The reason it is necessary is because you cannot change the irrigation use on the Historic & Existing Use permit granted in 2006. The biggest concern was using water from the Edwards/Trinity as opposed to using water from the aquifers with lesser quality water.

II Adjourn hearing and consider and/or act on **Production Permit for AARON & HEATHER BOESE.**

Jerry McGuairt adjourned the hearing at 12:22 p.m.

M. R. Gonzalez made a motion to grant the permit for **600 acre feet/year** from the Edwards Trinity Aquifer for a 2 well system located on T&P RR CO Block 48-9 Section 30. The purpose of this well system is for Industrial Use. Motion seconded by Merrell Daggett. Vote: 6 For. 1 Oppose. 4 Absent.

The Board recessed for lunch at 12:25 p.m.

REGULAR BOARD MEETING

I Call to order at 1:22 p.m. by President Jerry McGuairt.

II Comments from **public and media** (limit 5 minutes per person) No comments

III Consider and/or act upon **Minutes of April 21, 2015.**
Ronnie Cooper made a motion to approve all minutes as presented for April 21, 2015. Motion seconded by M. R. Gonzalez. Motion carried unanimously.

IV Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending April 30, 2015.**
Merrell Daggett made a motion to accept the Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending April 30, 2015. Motion seconded by John Dorris. Motion carried unanimously.

V Briefing on status of Texas Water Development Board's development of a Groundwater Availability Model and third parties' studies regarding the Capitan Reef, Desired Future Conditions and Modeled Available Groundwater of the Capitan Reef, and potential interest in relatively large-scale production from Capitan Reef; and take action regarding District's regulatory approach to managing and protecting property rights in the Capitan Reef, including but not limited to guidance to General Manager for rulemaking and/or imposing temporary moratorium on permitting and well drilling from the Capitan Reef.

Manager Weatherby: We have the potential for large scale production permits for the Capitan Reef Complex aquifer on the horizon. The Texas Water Development Board will have a Groundwater Availability Model (GAM) ready in about a year that will provide a valuable tool for decision making. Ward and Winkler counties use the Capitan excessively for the oilfield. Existing production and the drilling of new wells would not be affected by the moratorium.

Gene Lyda/La Escalera Ranch: With a moratorium in place it will be hard to get an investment Board to do anything which stagnates exploration. We have spent money and are afraid a deaf ear will be turned on what we have done. Mr. Lyda applauds the Board for their efforts to manage the water, but is concerned about the length of the moratorium and hopes the issue doesn't end up on the back burner.

Homer Mills/7V Ranch in Alpine, TX: I have a ranch in the Glass Mountains. I am on the Board of Directors of the Brewster County GCD, but I am not here as a Board member today. The ranch has 9 wells in the Capitan aquifer. The shallowest is 900' deep and up to 1,780' deep – with about 10 gallons-per-minute. We are on the lip-of-the-cup and are concerned about feeling adverse actions. I ask that you try and get all the facts or we will all be out of water if you are not careful. We are located south of La Escalera ranch. We are in the process of getting monitor wells on the ranch.

Mike Gershon, MPGCD attorney, requested to add one sentence to the resolution and that is to add to the paragraph that starts "Where As the District has been able to utilize a GAM developed by the TWDB for all aquifers located within the District except the Capitan Reef" – I would add a sentence that says GAMs are important because they provide important analytical tool, which has been determined essential for planning, policy making, and permitting as established by Chapter 36 of the Texas Water Code.

Janet Groth made a motion to adopt the resolution and order imposing temporary moratorium on new production permits from the Capitan Reef Aquifer with the additional sentence – "GAMs are important because they provide important analytical tool, which has been determined essential for planning, policy making, and permitting as established by Chapter 36 of the Texas Water Code". The motion was seconded by John Dorris. Vote: 7 For. 0 Oppose. 4 Absent. Motion carried. * See Attachment 2: Resolution and order imposing temporary moratorium on new production permits from the Capitan Reef Aquifer

VI Consider and/or act upon Waha Storage and Transportation, L.P.'s (and/or affiliate Enstor, Inc.'s) Production Permit Renewal pursuant to Rule 11.8.

The production permit for 7,729 acre feet per year from the Capitan Reef Aquifer for industrial use for a duration of 5 years was issued on November 16, 2005. They have reported usage of 300 – 350 acre feet annually each year. Manager Paul Weatherby has been in contact with Nick Nicodemus and Mr. Gee with Enstor, and he said that Enstor may need the current permit as is. If a reduction is made to the permit, Enstor understands they can request an increase if needed – another hydrogeological report will not be required.

John Dorris made a motion to reduce the permit to 1,000 acre feet. The motion was seconded by M. R. Gonzalez. Motion carried unanimously.

VII **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, ongoing Water Quality Analysis, Drought Map.**

- Well Registrations: Progress report in their notebooks.
- Water Quality Analysis: Ongoing.
- Data Loggers: Operations ongoing normally.
- Water Analysis Program: Normal operations ongoing.
- Drought Monitor Map: The current drought monitor map shows us out of the drought.

VIII Consider and/or act upon **General Manager's Correspondence.**

- E-mail RE: Funding opportunity by the Natural Resource Conservation Service (NRCS) through the Regional Conservation Partnership Program (RCPP) for financial assistance for the improvement and beneficial use of the flowing San Andres and/or Capitan wells in Pecos County.
- 2015 Estimated Taxable Property Values from the Pecos County Appraisal District
- Article about the Trans-Pecos Pipeline
- Information about the Texas Groundwater Summit to be held August 25-27, 2015, in San Marcos, TX.
- Article titled "Texas needs network for sharing water supplies"
- Legislative Update dated 05-15-2015

IX **Directors' comments.** No comments

X Consider and/or act upon **agenda for next meeting.**

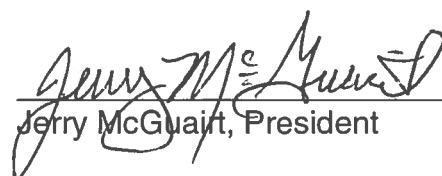
- City of Fort Stockton industrial production permit
- Progress update on Bugington Energy, LLC
- Nabors permit
- La Escalera's presentation of Capitan Reef Complex hydrogeological study.

XI **Adjourn.**

Merrell Daggett made a motion to adjourn the meeting at 2:27 p.m. Motion seconded by John Dorris. Motion carried unanimously.



M. R. Gonzalez, Secretary/Treasurer



Jerry McGuairt, President

Date Approved 07-21-2015

Attachment 1**Allan Standen, LLC**Evaluation of Potential Contamination
from Bugington Oil Wells

*Attachment for Minutes of 05-19-15

**Memorandum**

To: Mr. Paul Weatherby, District Manager

From: Allan R. Standen LLC

Date: 5/21/2015

Re: Evaluation of Potential Contamination from Bugington Oil Wells

Purpose

This report examines the potential for groundwater contamination from produced water and oil at two Bugington well sites. This study questions if contaminants leaked at the surface of these well sites can reach the underlying water table through infiltration. The wells of concern are located at (31.22785°N 102.71498°W, 31.23009°N 102.71553°W or Tank Battery 4), and are within the Pecos Valley Alluvium Aquifer system in Northern Pecos County (Figure 1).

Depth to Water from Land Surface and Groundwater Flow Contours

Water level data was collected from MPGCD monitor wells in the vicinity of the Bugington leaking wells during the early months of 2015 (Table 1). The depth to the water table in the vicinity of the Bugington wells is estimated to be approximately 30 feet. A groundwater level surface (relative to sea level) was created based on the four water level measurements provided in Table 1 and are illustrated in Figure 2. Figure 2 also illustrates the groundwater flow direction using five foot groundwater surface elevation contours. The groundwater flow is north by northeast towards the Pecos River.

Elevation Above Sea Level	Depth to Water from Land Surface (feet)	Lat/ Long DD
2,428	44	31.23170, -102.82251
2,441	57	31.21213, -102.75397
2,415	37	31.21562, -102.71854
2,375	27	31.24311, -102.64701

Table 1. Water level measurements in Bugington Well Sites Study Area

Soils Data Source

Soil properties data were obtained from the digitally available National Cooperative Soil Survey (NCSS) dataset for Pecos County (Rives, 1980). Figure 3 illustrates the surface spatial distribution of the different soil types identified in this soils dataset. The Bugington wells are located in Reagan silty clay loam saline (Figure 3). This digital soils dataset has numerous soil properties compiled for each soil type including each soil horizons clay and sand %, cementation, infiltration rate and saturated hydraulic conductivity which are based on field measurements conducted by the NCSS. The Reagan silty clay loam has three soil horizons.

The combination of these two data sets (depth to water and soil properties) allows for the calculation of the estimated time for surface water contamination to reach the water table.



Soil Characteristics and Infiltration rate

The Reagan silty clay loam, saline is relatively flat with deep horizons. Through the 60 inches of the soil profile the average texture is 6% sand, 60% silt and 34% clay. This soil type is well-drained with slow run-off rates. Layers that may prohibit the vertical transmission of water were not observed within the soil profile.

The surface recharge or vertical soil infiltration rate of water is controlled by soil characteristics and evapotranspiration (ET, evaporation and plant transpiration). Based on a Texas Railroad Commission report by Jeffery Morgan dated 3/10/2015 (Reference No. 15-1643) the Bugington Tank Battery Well #4 is estimated to have leaked at 3 gallons per minute (gpm) or equivalent to 4,320 gallons per day. It is assumed that any loss of water through ET is overcome by saturated soil conditions promoted by the steady supply of the produced contaminated water. The measured chloride content of the leaking water has been measured at 54,000 ppm, Morgan, 2015).

The saturated hydraulic conductivity, otherwise known as permeability, for the most limiting soil layer to transmit water in the Reagan silty clay loam has a *Ksat* value of 1.28 in/hr. This value falls in the upper range of the moderately high *Ksat* class which ranges from 0.57 in/hr to 1.98 in/hr. Using the *Ksat* value of 1.28 in/hr under saturated conditions and a water depth of 30 feet, it takes surface water approximately 12 days to reach the water table (Table 2). Increasing the depth to the water table to 50 feet the transmission of water on the surface to the water table would take approximately 20 days.

When considering the slowest rate of infiltration in the moderately high class the transmission of water from the surface to the water table at 30 feet would take approximately 26 days (Table 2).

Depth (Ft.) below land surface	Infiltration rate for Reagan silty clay loam 1.28 in/hr	Lowest infiltration rate in the moderately high class 0.57 in/hr
25	10 days	22 days
30 (Water Table)	12 days	26 days
40	16 days	35 days
50	20 days	44 days

Table 2. Elapsed time for transmission of water at the surface to a depth of 25, 30, 40 and 50 feet. This table compares the infiltration rate for Reagan silty clay loam to the lowest transmission rate in the moderately high class. The data in this table is used as a means of comparison to a less favorable infiltration rates.

Conclusion

The data presented in this report supports that produced water from the Bugington Tank Battery Well #4 well and other well would reach the underlying water table at 30 feet below land surface in a minimum of approximately 12 days and a maximum of approximately 26 days under saturated conditions. The calculations in this study are considered very conservative. The assumption that the infiltration rate remains constant until reaching the water table does not take into account the higher rates that could potentially exist within the underlying alluvial aquifer system. The lowest *Ksat* value still considered to be in the moderately high class was generated only to provide a comparison to lower vertical rates of transmission.

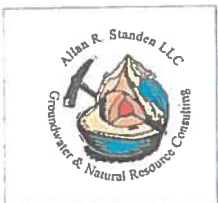
Trenches and or boreholes across and/or within the Bugington contamination area is recommended to determine the vertical and lateral spatial extent of contamination.



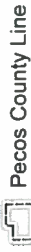
References Used

Morgan, J., 3/10/2015, Railroad Commission of Texas Memo, Reference No. 15-1643, 4 p.

Rives, J. L., 1980, Soil Survey of Pecos County, National Cooperative Soil Survey, 97 p. available electronically <http://websoilsurvey.nrcs.usda.gov/app/>



Legend



Pecos County Line



State Well Grid



Roadway



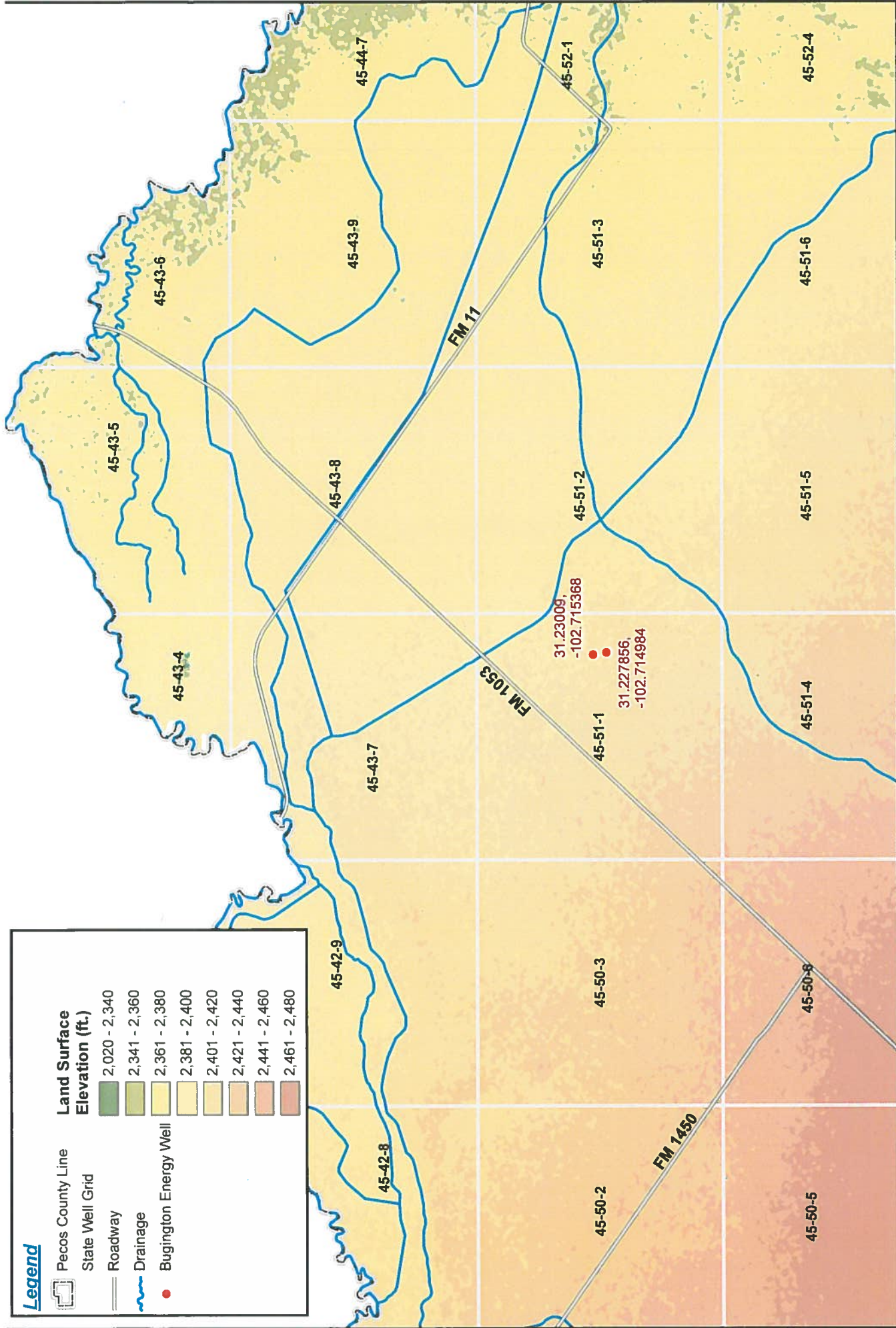
Drainage



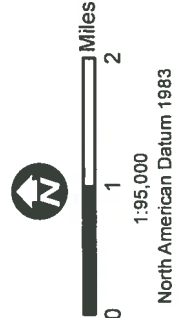
Bugington Energy Well

Land Surface Elevation (ft.)

- 2,020 - 2,340
- 2,341 - 2,360
- 2,361 - 2,380
- 2,381 - 2,400
- 2,401 - 2,420
- 2,421 - 2,440
- 2,441 - 2,460
- 2,461 - 2,480



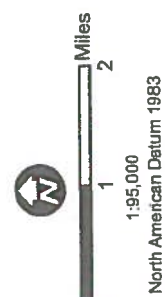
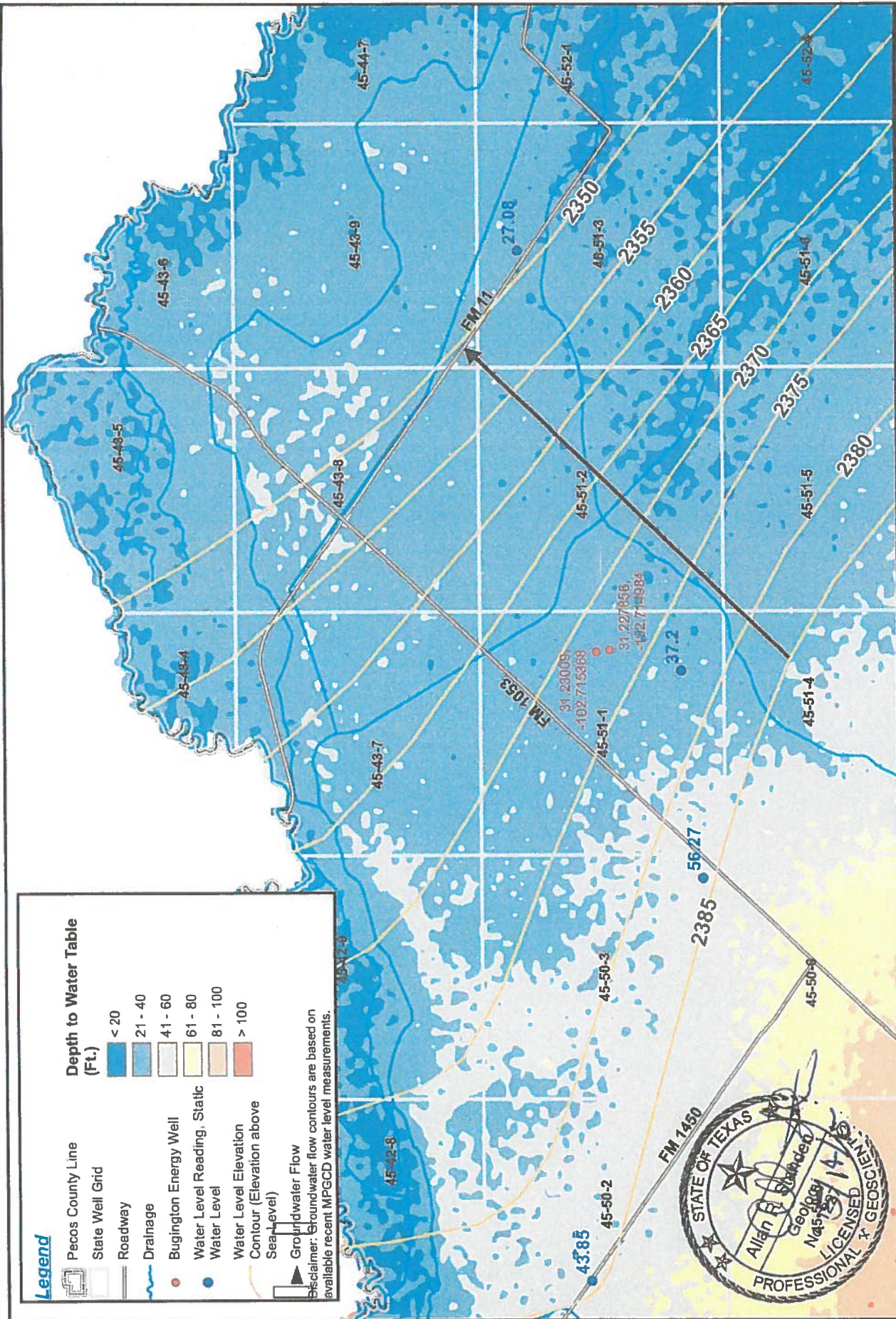
**Bugington Study Area,
Land Surface Elevation
and Drainages
Figure 1**



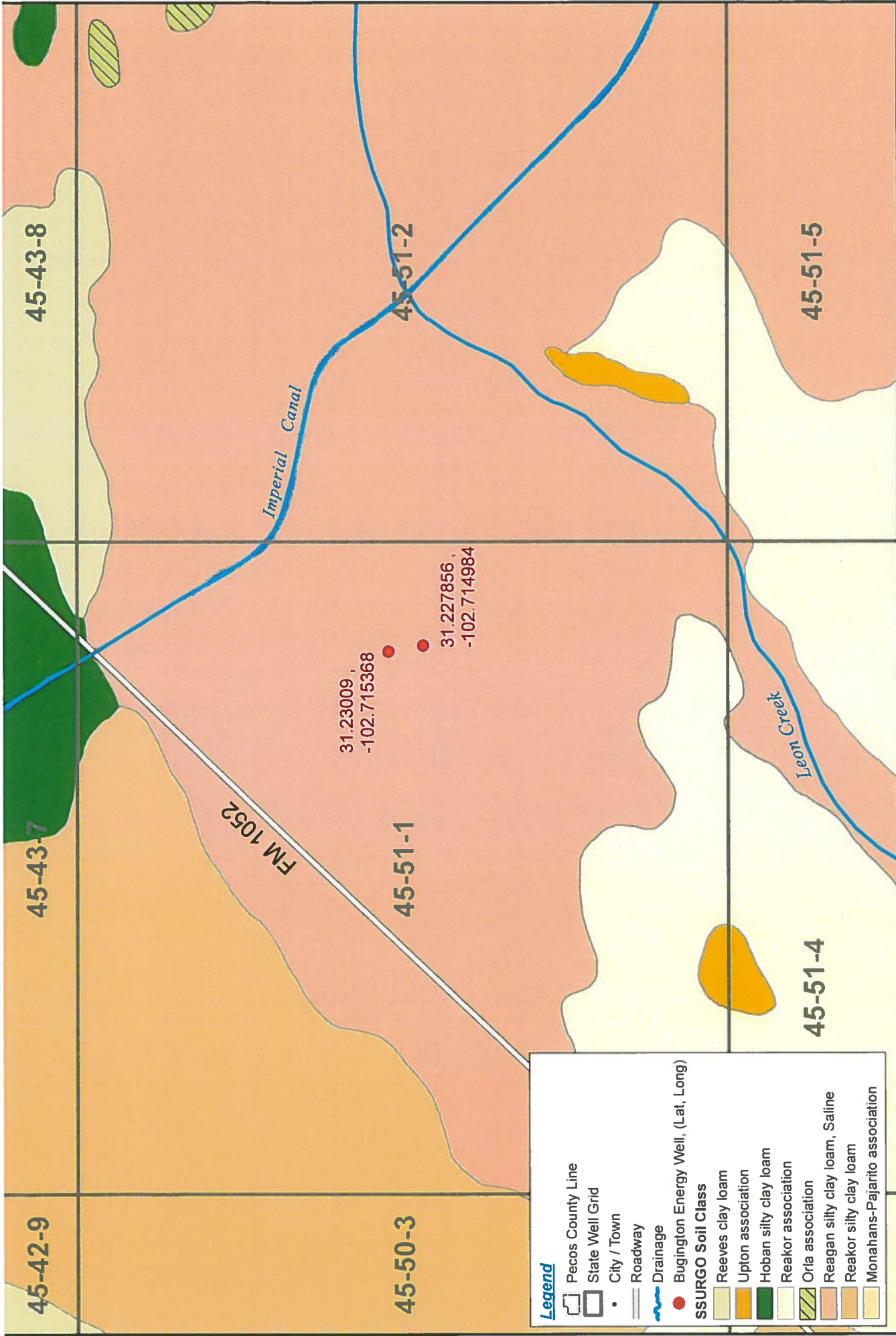
Legend

- Pecos County Line
 - State Well Grid
 - Roadway
 - Drainage
 - Bugington Energy Well
 - Water Level Reading, Static
 - Water Level
 - Water Level Elevation Contour (Elevation above Sea Level)
 - Groundwater Flow
- Depth to Water Table (Ft.)**
- < 20
 - 21 - 40
 - 41 - 60
 - 61 - 80
 - 81 - 100
 - > 100
- Water Level Reading, Static**
- 31.23009
 - 102.715368
 - 31.227956
 - 102.714984
- Water Level**
- 43.85
 - 45-50-2
 - 45-50-3
 - 45-51-1
 - 45-51-2
 - 45-51-3
 - 27.08
 - 37.2
 - 56.27
- Water Level Elevation Contour (Elevation above Sea Level)**
- 2350
 - 2355
 - 2360
 - 2365
 - 2370
 - 2375
 - 2380
 - 2385
- Groundwater Flow**
- FM 1053
 - FM 1450
 - FM 11

Disclaimer: Groundwater flow contours are based on available recent MFGCD water level measurements.



**Bugington Study Area,
Water Level Measurements and
Groundwater Flow Contours
Figure 2**



45-42-9

45-43-7

45-43-8

45-50-3

45-51-1

45-51-2

45-51-4

45-51-5

FM 1052

Imperial Canal

Leon Creek

31.23009 ,
-102.715368

31.227856 ,
-102.714984

Legend

- Pecos County Line
- State Well Grid
- City / Town
- Roadway
- Drainage
- Bugington Energy Well, (Lat, Long)

SSURGO Soil Class

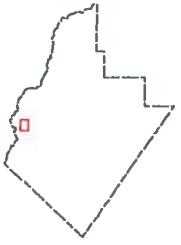
- Reeves clay loam
- Upton association
- Hoban silty clay loam
- Reakor association
- Orla association
- Reagan silty clay loam, Saline
- Reakor silty clay loam
- Monahans-Pajarito association



**Bugington Study Area,
SSURGO Soils Map**
Figure 3



North American Datum 1983
1:36,000



Attachment 2:
Resolution and order imposing
temporary moratorium on new
production permits from the
Capitan Reef Aquifer

**RESOLUTION
OF THE BOARD OF DIRECTORS OF THE MIDDLE PECOS
GROUNDWATER CONSERVATION DISTRICT
MEETING HELD MAY 19, 2015**

**A RESOLUTION AND ORDER ESTABLISHING A TEMPORARY MORATORIUM
ON NEW PRODUCTION PERMITS FROM THE CAPITAN REEF AQUIFER**

WHEREAS, the Middle Pecos Groundwater Conservation District (the “District”) is a political subdivision of the State of Texas organized and existing under Article XVI, Section 59, of the Texas Constitution, and is a groundwater conservation district operating under Chapter 36 of the Texas Water Code and the District’s enabling act, Chapter 8851 of the Texas Special Districts Code.

WHEREAS, the District’s Board of Directors (the “Board”) has recently become aware that multiple entities have begun to evaluate large-scale production from the Capitan Reef Aquifer (the “Capitan Reef”) within Pecos County to meet *future* water demand.

WHEREAS, few existing users currently rely upon the Capitan Reef; only two *nonexempt* existing users have relied on any significant amount of groundwater from the Capitan Reef: one in-district agricultural user and one out-of-district industrial user that exports 100% of its permitted water to develop an underground natural gas storage operation. Area landowners have relied on shallower Capitan Reef wells close to the outcrop for *exempt* ranching purposes.

WHEREAS, the Texas Water Development Board (the “TWDB”) has estimated the Modeled Available Groundwater (the “MAG”) cumulative annual production figure for the Capitan Reef in Pecos County within Groundwater Management Areas 3 and 7 at 11,122 acre-feet, and the total amount of water authorized for annual production from the Capitan Reef within Pecos County in both GMAs at 10,942 acre-feet.

WHEREAS, although it may be unlikely that current exempt and permitted production will impair the DFCs as established, the Board remains uncertain as to the effects of increased new production from the Capitan Reef on these DFCs, in part because of the lack of data, hydrogeologic assessments, or any models for any portion of the Capitan Reef within Pecos County.

WHEREAS, the District has been able to utilize a Groundwater Availability Model (a “GAM”) developed by the Texas Water Development Board (the “TWDB”) for all aquifers located within the District except for the Capitan Reef – TWDB has completed GAMs for the other four aquifers (Edwards-Trinity (Plateau) Aquifer, Pecos Valley Aquifer, Rustler Formation, and Dockum Aquifer). GAMs are important because

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they provide an important analytical tool, which has been determined essential for planning, policymaking and permitting as established by Chapter 36 of the Texas Water Code.

WHEREAS, the Board recognizes that the lack of scientific data typically available to evaluate production permit applications under applicable permitting criteria subjects landowners with interests in the Capitan Reef to risk of adverse impacts that cannot be determined within an acceptable degree of scientific certainty, and the Board desires to better protect private property rights in the Capitan Reef.

WHEREAS, the Board finds that a temporary moratorium on issuing new production permits for the Capitan Reef will not affect the existing uses, nor will it affect immediate demand for any of the third-party projects or restrict those project proponents from seeking drilling permits, drilling wells if approved and conducting due diligence. To the contrary, the moratorium will ensure that each and every future production permit application has better science available to ensure that their respective projects have sufficient groundwater availability without affecting or being affected by other existing and/or proposed groundwater production.

WHEREAS, the Board will impose a temporary moratorium on new production permitting to the Capitan Reef to achieve the above-stated purposes, while recognizing that access to the other four aquifers will be available, as will access to the Capitan Reef from exempt wells.

NOW THEREFORE, BE IT RESOLVED THAT:

The above recitals are true and correct.

The Board hereby adopts a temporary moratorium on accepting new production permit applications for groundwater production from the Capitan Reef, thereby prohibiting the filing of, processing of, and decision on any application for a production permit in the District specific to the Capitan Reef. The purpose of this temporary permitting moratorium is to allow the Board to continue to receive scientific data, including but not limited to a GAM from TWDB, the District and/or third parties; hydrogeologic reports from District consultants and/or drilling permittees; and hydrogeologic and other data relevant to the Capitan Reef. This temporary permitting moratorium shall in no way impair an existing permit holder's ability to conduct activities authorized under a permit issued by the District prior to the effective date of the temporary permitting moratorium, as provided herein. With respect to wells clearly exempt under the express language of Section 36.117 of the Texas Water Code, the District's temporary moratorium does not apply.

The District's rules and other regulatory programs that fall outside the scope of the moratorium described in this resolution shall remain in effect, including but not limited to those rules that authorize the District to enforce its rules and this moratorium. To be clear, the District may enjoin the operation of any well, seal any well, and otherwise exercise its authority under the current rules and applicable law to address any activities that fall within the scope of this temporary moratorium.

This temporary moratorium shall be effective as of the date of passage of this resolution and order reflected on the date of execution below. The temporary moratorium shall remain in effect until a subsequent decision of the Board provides otherwise.

The Board President and General Manager are further authorized to take any and all action necessary to implement this resolution.

AND IT IS SO ORDERED.

Upon motion duly made by Director Janet Groh,
and seconded by Director John Davis, and upon
discussion, the Board voted 7 in favor and 0 opposed, 0 abstained, and 4 absent,
and the motion thereby PASSED on this 19th day of May, 2015.

MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

By: Jenny McQuaid
Board President

ATTEST:

M.R. Gonzalez
Board Secretary