

MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

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Email: mpgcd@mpgcd.org Website: www.mpgcd.org

Directors

Jerry McGuairt, President John D. Dorris, Vice President M. R. Gonzalez, Secretary/Treasurer
Alvaro Mandujano, Jr. Vanessa Cardwell Ronald Cooper Janet Groth
Weldon Blackwelder Terry Whigham Merrell Daggett

Employees

Paul Weatherby, General Manager Ty Edwards, Assistant Manager
Melissa Mills, Office Manager Gail Reeves, Office Assistant

Minutes of November 15, 2016

On this the 15th of November, 2016, a regular board meeting and public hearing was 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
Janet Groth	Precinct 1
Weldon Blackwelder	Precinct 3
Ronald Cooper	Precinct 4
Alvaro Mandujano, Jr.	Precinct 4
Vanessa Cardwell	City of Fort Stockton

Quorum Present.

Board members absent: John Dorris, Merrell Daggett and Terry Whigham. Position for City of Iraan is vacant.

Others present: Paul Weatherby, Mike Gershon, Gail Reeves, Ty Edwards, Harvey Gray, Melissa Mills, Summer Webb, Ori White, Joe Schuster, Santiago Cantu, Lupe Dominguez, Drew Miller, Ernest Woodard, Larry Hoelscher, Kirby Warnock, Jeff Williams, Brock Thompson, Ed McCarthy, Mike Thornhill, Jimmy Perkins, Bob Harden, Marty Jones, James Cravens, Curtis Skeen, Paula McGuairt, Tommy Ervin, Gwen Kennedy Hunnicutt, Jack G. Hunnicutt, Robert Mosley, Mark H., Dennis Braden, Todd and Jill Suter, Rod Ponton, Brian Desmond, T. J. Higginbotham, Buck Benson, Ryan Reid, Glenn Honaker, Mark Harral, Raul Rodriguez, Oscar Hernandez, Robin Parsley/Court Reporter, Stephanie Bennett/CBS 7, and Bob Beal/Fort Stockton Pioneer.

- I Call to order regular Board meeting at 10:03 a.m. by President Jerry McGuairt.
- II **Canvas November 8, 2016 Election.** Tabled.
- III **Administer the Statement of Elected Officer.** Tabled.
- IV **Administer Oath of Office for Board Members.** Tabled.
- V Consider and/or act upon **MPGCD Board Reorganization.** Tabled.
- VI Comments from **public and media:** No comments.

DRILLING PERMIT HEARING for Larry Hoelscher

- I. The Public Hearing was called to order at 10:05 a.m. by President Jerry McGuairt.

Party representing application: Larry Hoelscher

Protestant to application: None

Public Comment: None

Ty Edwards presented the application to the Board.

The application is for a drilling permit. The well is located on Survey Claunch, MRS Block OW Section 61, approximately 1 mile North of Coyanosa and 1 mile East of FM 1776 in Pecos County, TX. The well is projected to be 600-700 ft in depth, and drilled into the Pecos Valley Aquifer. The purpose of the well is for Agricultural Use. This is not a replacement well. The application is administratively complete.

Larry Hoelscher was sworn in. He has an *Historic and Existing Use Permit* on one well and he wants to keep that permit. Once the new well is drilled, he will not be asking for more production to be added to his existing permit, he would like to add this well to that permit.

- II Adjourn hearing and consider and/or act on **Application for a Drilling Permit for Larry Hoelscher.**

Jerry McGuairt adjourned the hearing at 10:11 a.m.

Ronnie Cooper made a motion to approve the application as presented. Motion seconded by Janet Groth. Motion passed unanimously.

**PRODUCTION PERMIT HEARING for
Republic Water Company of Texas, LLC**

- I Call to order at 10:12 a.m. by President Jerry McGuairt. Mr. McGuairt is the Presiding officer of the hearing. The hearing will be governed by applicable statutory law, including the District's enabling act, Chapter 36 of the Water Code, Chapter 551 of the Texas Government Code

NOTE: Robin Parsley, a Certified Court Reporter, transcribed this agenda item. She may be contacted through Permian Court Reporters 432-683-3032.

The permit application was declared administratively complete.

Public Comment on Permit Application:

- Allan H. Goldman sent written comment: I am a land owner in the district and am very concerned about large volumes of water being exported out of the area. Additionally I am concerned about possible water contamination and the adverse effects it could have on my land. I urge the board to consider future effects related to both of my concerns when the district considers this permit application.
- Stephen Lau PH.D. sent written comment: I am a landowner with 190 acres located 4 miles west of the City of Fort Stockton and also with 1,300 acres in Imperial. I strongly object to removal of ground water from this area aquifers and sell to somewhere else. My tenants west of Ft. Stockton is struggling with getting enough water for their daily use and even have to purchase water and have the water truck in at great expense. Please do not issue them a permit to steal water from the area. Thank you for your attention.
- Kirby Warnock appeared before the Board to provide comment against the permit application. He suggested that Mr. Williams could be paid to curtail his water use so that the Comanche Springs may flow once again and tourism return.
- Dennis Braden appeared before the Board to provide comment *FOR/in favor* of the permit application. He is a land owner in Pecos County. He said that under Texas law a land owner has the right to use the water as they see fit.
- Todd Suter appeared before the Board to provide comment *FOR/in favor of* the permit application. He spoke on behalf of Hammond Ranch in Pecos County. He feels the same as Dennis Braden. He hasn't been affected by the water that Williams Farm has been pumping, and sees no reason to deny the permit.

According to the Texas Water Code section 36.415 and MPGCD rules 11.10.4(a)(1) parties and individuals seeking party statues will be considered at this time.

Stipulation Request: Attorney for Pecos County, Drew Miller, asked to have as part of the official record a stipulation that Pecos County and Republic Water Company of Texas, LLC (Republic) agree to stipulate that Pecos County has a justiciable interest in this matter that would be adversely affected by the proposed permit, and is therefore entitled to party status in this proceeding under Chapter 36 of the Texas Water Code and the District rules. Attorney for Republic, Mr. Jones, agreed and is willing to make the same agreement with the City of Fort Stockton (City), George Riggs, the Pecos County Water Control and Improvement District #1 (PCWCID#1), Cockrell Investment Partners, LP (Cockrell Investment) and Fort Stockton Holdings, LP (FSH), the Middle Pecos Groundwater Conservation District General Manager (District Manager), and the Kennedy Ranch.

Ronnie Cooper made a motion to recognize that the following parties have demonstrated the requisite justiciable interest under both District rules and the Water Code and therefore have party status for this entire proceeding before the District. Recognizing the stipulation that justiciable interest in this matter that Pecos County, City of Fort Stockton (City), George Riggs, the Pecos County Water Control and Improvement District #1 (PCWCID#1), Cockrell Investment Partners, LP (Cockrell Investment), and the Kennedy Ranch would be adversely affected by the proposed permit, and is therefore entitled to party status in this proceeding under Chapter 36 of the Texas Water Code and the District rules.

Party status is granted to:

- Pecos County
- City of Fort Stockton (City)
- George Riggs
- Pecos County Water Control and Improvement District #1 (PCWCID#1)
- Cockrell Investment Partners, LP (Cockrell Investment)
- Kennedy Ranch
- Fort Stockton Holdings, LP (FSH)
- Middle Pecos Groundwater Conservation District General Manager (District Manager)

Janet Groth seconded the motion. Motion passed unanimously.

Board President Jerry McGuairt declared this to be a contested hearing.

Marty Jones presented the Board with a written request to have further hearings conducted by the State Office of Administrative Hearing (SOAH). He named this as exhibit 1. (Marked as Initial Preliminary Hearing Exhibit #1)

President McGuairt recognized and accepted that Republic has requested a SOAH Hearing.

Mr. McGuairt requested the contact information from each of the qualified parties. He stated that each of the parties have qualified under District Rules in section 36.415, 36.416, and in the Texas Water Code section 36.418c2 . It was declared that contact via email will be used for service documents.

In light of a possible SOAH hearing, Middle Pecos GCD will need to contact and enter a contract with SOAH for conducting a hearing. The District will need to provide an estimate of hours required for the SOAH judge so that a cost estimate can be formulated, and Republic can put up a deposit for the SOAH cost.

First, an issue that needs to be addressed before a referral to SOAH is Republic's standing to pursue the application because of how the Republic application reads.

Second, the effect of the Board's previous decision on the Fort Stockton Holdings' application and how it will affect the Republic application. There is a significant overlap in the request for relief and facts in both applications. We are dealing with the same water rights, same wells, same surface estate and same linkage to Fort Stockton Holdings' *Historic Use* permits.

In previous open meetings and in court, the terms *res judicata* and *collateral estoppel* have been used to describe how previous decisions on the Fort Stockton Holdings' application may affect the Republic application and are unresolved legal issues.

Mr. McGuairt stated that his understanding is that SOAH's purpose is to conduct evidentiary hearings where there are contested facts in a contested hearing.

Mr. Jones believes that under both the water code and the rules of this history, once an application has been determined to be a contested case, then all further proceedings will be referred to SOAH. Mr. Jones assumes both under the Texas Water Code and the District rules, that would mean all issues related to the application, including issues that might exist regarding standing or the former Fort Stockton Holdings application and that SOAH should be making the determination on those issues.

Mr. McGuairt proposed that each party have 30 days until December the 15th to file a brief with the District, laying out their position on *res judicata* and *collateral estoppel* and standing. The applicant will have two weeks until December 29th to follow response. Then, the Board will take up these issues on January 17, 2017 at 1:00 p.m. at this same location.

The parties were asked for their opinion(s) on the proposal:

1. Is the Board required immediately and automatically to refer this case to SOAH or not?
2. Should this permit be dismissed or denied based on the issues of *res judicata* and *collateral estoppel* or standings.

City of Fort Stockton/Attorney Mark Harral: The City of Fort Stockton requests time to review the application of Fort Stockton Holdings, as well as Republic application to make that determination. Briefs will be filed next month.

George Riggs/ Attorney Mark Harral: Requests time to review the application of Fort Stockton Holdings, as well as Republic application to make that determination.

Pecos County/Attorney Drew Miller: Requested time to research in depth the issues of *res judicata* and *collateral estoppel* and standing. If it is proper for this case to be decided without a SOAH, or referral, it would generally be a good thing and save time and expense for all parties for a more protracted SOAH proceeding.

Cockrell Investment/Buck Benson and Ryan Reed: They appreciate the issuance of a continuance so they can study and brief the issues.

Pecos County WCID#1/Board President Harvey Gray: No comment.

Kennedy Ranch/Mr. Hunnicutt: No comment.

Fort Stockton Holdings, LP/Attorney Ed McCarthy:

He concurs with Mr. Jones' observations. After a quick review of the Texas Water Code chapter 36, sections 36.051 or 36.415 or the District Rules do not appear to contemplate what you have proposed. They contemplate that if a contested case is granted, the matter is referred to SOAH for all issues associated with the contested case.

Mr. McCarthy believes that the *res judicata* issue, whether a question of law or fact, is appropriately referred to SOAH. He recommends that the Board go ahead and contract with SOAH and let SOAH make that determination and that can be an issue that the Board can refer to the SOAH judge to be considered at the onset.

Middle Pecos GCD/Attorney Mike Gershon:

As indicated, your intention is to contact and communicate with SOAH immediately. The applicant should not be prejudiced by giving essentially 45 days for all of the parties to weigh in on the question of whether this District has to immediately refer to SOAH before making any other decision before the Board or not. Your proposal seems reasonable.

Jimmy Perkins with Republic asked to be recognized. He was sworn in. He stated that the proposal is a sound plan, but does not preclude the fact that SOAH should be engaged. This is a contested hearing and we have requested a SOAH hearing. It doesn't cost anyone else anything because Republic will bear the cost. These legal issues of *res judicata* and *collateral estoppel* are not for us to decide here informally between us. That is for the evidentiary hearing, the SOAH judge, and that is what we are requesting. It is what the Water Code requires you to do.

Attorney Mike Gershon clarified a comment by Mr. Perkins. The comment that SOAH makes the decision on law issues is not true. This Board makes the decision – the ultimate decision on the application. The purpose of the referral to the State Office of Administrative Hearings is essentially to allow for the evidentiary hearing so that the judge can decide contested facts, and the judge does decide these contested facts. With respect to law issues, SOAH can weigh in on law issues and provide conclusions of law in the proposal for a decision, but Texas law provides this Board is not bound by the legal determinations of SOAH. They are for this Board to decide.

President McGuairt ruled the following:

- November 29, 2016 by 5:00 p.m.: Deadline for each party to e-mail President McGuairt their time and cost estimates and level of discovery required during the hearing on the merits.
- December 15, 2016: Deadline for each party, other than Republic, to file a brief with MPGCD, laying out their position on *res judicata* and *collateral estoppel* and standing and how procedurally the Board should address those law issues and whether an evidentiary hearing at SOAH is necessary to resolve those issues.
- December 29, 2016: Deadline for applicant to follow with a response.
- January 17, 2017 at 1:00 p.m.: MPGCD Board will take up these issues at the Continued Hearing at this same location.

Marty Jones pointed out that ex parte communication rules of the District under rule 3.3 become into effect. He requested that President McGuairt instruct the Board not to communicate with other parties to the proceeding, including the General Manager.

II **Adjourn hearing and consider and/or act on Application for a Production Permit and Authorization to Transfer for Republic Water Company of Texas, LLC.**

Continued Hearing to January 17, 2017 at 1:00 p.m. at the Middle Pecos GCD office.

Returned to the regular meeting at 11:12 a.m.

Regular Board Meeting continued

- VII Consider and/or act upon **Minutes of October 18, 2016/Regular Meeting.**
Ronnie Cooper made a motion to approve the minutes of October 18, 2016 for the Regular Meeting. Motion seconded by Weldon Blackwelder. Motion carried unanimously.
- VIII Consider and/or act upon **Minutes of October 27, 2016/Special Called Meeting.**
No action taken or needed. Special Meeting not called to order.
- IX Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending October 31, 2016.**
Alvaro Mandujano, Jr. made a motion to approve the Accounts Payable and Treasurer's Report and Line Item Transfers for the month ending October 31, 2016. Seconded by Ronnie Cooper. Motion carried unanimously.

X Report on Oct. 20, 2016 Groundwater Management Area 3 Joint Planning Meeting.

Ty Edwards updated the Board on the GMA 3 Joint Planning meeting. There were 5 resolutions approved. The drawdowns were modeled on the new model submitted by the Texas Water Development Board. We are now waiting on administrative completeness before we bring it to our Board for approval.

- **Resolution 16-01:** Desired Future Conditions for the Capitan Reef Aquifer in Groundwater Management Area 3
 - Total net drawdown not to exceed 4 feet in Pecos County (Middle Pecos GCD) in 2070 as compared with aquifer levels in 2006, as set forth in Scenario 4 in exhibit "A" (GMA 3 Technical Memorandum, 16-06) attached hereto and fully incorporated herein;
 - Total net drawdowns in Ward and Winkler Counties no to exceed 2 feet in 2070 as compared with 2006 aquifer levels, as set forth in Scenario 4 in exhibit "A" (GMA 3 Technical Memorandum 16-06) attached hereto and fully incorporated herein;
 - The Capitan Reef Aquifer is not relevant for joint planning purposes in all other areas of GMA3.

- **Resolution 16-02:** Desired Future Conditions for the Dockum Aquifer in Groundwater Management Area 3
 - Total net drawdown in the following GMA 3 counties not to exceed drawdowns in 2070, as compared with aquifer levels in 2012, set forth in Scenario 17 attached as Exhibit "B" (GMA 3 Technical Memorandum 16- 05) hereto and fully incorporated herein:

County (GCD)	No. of Feet of Drawdown 2070
Crane	0
Loving	5
Pecos (Middle Pecos GCD)	52
Reeves (Reeves County GCD)	20
Ward	30
Winkler	22

- **Resolution 16-03:** Desired Future Conditions for the Edwards-Trinity (Plateau) and Pecos Valley Aquifers in Groundwater Management Area 3

- Total net drawdowns in the following GMA 3 counties not to exceed drawdowns in 2070, as compared with 2010 aquifer levels, set forth in “Scenario 11 Extended to 2010” in Exhibit “C” (GMA 3 Technical Memo 16-01, Draft 1) attached hereto and fully incorporated herein:

County (GCD)	No of Feet of Drawdown 2010 to 2070
Crane	46
Loving	4
Pecos (GMA 3 portion) (Middle Pecos GCD)	14
Reeves (Reeves County GCD)	7
Ward	55
Winkler	115

- **Resolution 16-04:** Desired Future Conditions for the Rustler Aquifer in Groundwater Management Area 3

Total average net drawdowns in the following GMA 3 counties not to exceed drawdowns in 2070, as compared with 2009 aquifer levels, as set forth in Scenario 4 in Exhibit “D” (GMA3 Technical Memo 16-02) attached hereto and fully incorporated herein.

County (GCD)	No. of Feet of Drawdown 2070
Loving	28
Pecos (GMA 3) Middle Pecos GCD	69
Reeves (Reeves County GCD)	40
Ward	30
Winkler	31

The Rustler Aquifer is not relevant for joint planning purposes in Crane County.

- **Resolution 16-05:** Declaration that the Igneous and Ogallala Aquifers Are Not Relevant for Purposes of Joint Planning in Groundwater Management Area 3

- XI Briefing and take action as necessary on **Republic Water Company of Texas, LLC and Fort Stockton Holdings, LP federal lawsuit** filed May 20, 2016, Cause #4:16-CV-33-PRM.

MPGCD attorney, Mike Gershon, updated the Board on Cause #4:16-CV-33-PRM. The case has been dismissed without prejudice which means it can be refiled. We will not be able to recoup our legal costs of \$100,000.
No action taken.

- XII Consider and/or act upon **2017 Meeting and Holiday Schedule**.
Alvaro Mandujano, Jr. made a motion to amend the schedule that was presented to reflect 1/2 day holiday on December 22, 2017. Motion died for a lack of a 2nd.

Vanessa Cardwell made a motion to approve the 2017 meeting and holiday schedule as presented. Motion seconded by M. R. Gonzalez. The motion failed with a vote of 5 FOR. 2 AGAINST. 3 ABSENT. 1 VACANT.

This agenda item will be considered again at the 11-21-2016 Special Called meeting.

- XIII **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, Drought Monitor Map and ongoing Water Quality Analysis.**

- Well registrations: Continuing as normal
- Drought Monitor Map: In their Board presentation.

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

- Draft Interim report for Senate Ag., Water, and Rural Affairs committee to the Senators:

Recommendations:

Charge 1 - The committee makes the following recommendations to the 85th Legislature regarding the ownership, production, and transfer of surface water and groundwater in the state of Texas:

- The Legislature should continue to monitor the performance of groundwater conservation districts and make any necessary changes to improve their performance.

- The Legislature should continue to monitor the judicial application of oil and gas law to groundwater law and, if necessary and appropriate, codify those judicial applications.

Charge 2 – The committee makes the following recommendations to the 85th Legislature on improving the process of developing and executing the state water plan:

- The Legislature should consider providing certain regional water planning groups the option to reauthorize or update their regional water plan once every ten years.
 - The Legislature should modify Section 16.053, Texas Water Code, and other sections of state law or state rule, so that modeled available groundwater is no longer required to operate as a hard cap that prevents viable water management strategies from being included in regional water plans.
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- Manager Paul Weatherby gave a program to the Lions Club regarding the importance of registering your water wells with the MPGCD on 11-09-2016.
 - A public announcement will run in the Fort Stockton Pioneer several times and will emphasize the importance of registering your water wells with the MPGCD.
 - The election results were presented to the Board. The canvass will take place on November 21, 2016 at a Special Called Meeting.
 - The Board was given a draft MOU (Memorandum of Understanding) between the MPGCD and the Texas Railroad Commission. The MOU is requesting collaboration between the TCEQ, RRC and MPGCD on matters related to discharges, surface water quality, groundwater protection, underground injection control and geologic storage of carbon dioxide. The MOU will be tabled until the next regular meeting.

XV **Directors' comments.** No comments.

XVI Consider and/or act upon **agenda for next meeting.**
Items carried to a Special Called Meeting for November 21, 2016:
1) Holiday Schedule. 2) Canvas November 8, 2016 Election. 3) Administer the Statement of Elected Officer. 4) Administer Oath of Office for Board Members. 5) Board Reorganization. 6) Appointment of New Director for City of Iraan. 7) Executive Session on Personnel and action on Personnel. 8) Retaining legal representative for MPGCD Board and/or General Manager during the Republic hearing(s).

Currently the December 20th meeting may be cancelled.

Items for the January 17, 2017 regular meeting: Continuation of the Republic Water Company of Texas, LLC hearing. Annual audit presentation possibly.

XVII Adjourn Board meeting.

Alvaro Mandujano, Jr. made a motion to adjourn the meeting. Motion seconded by Janet Groth. Motion carried unanimously. Adjourned at 12:00 p.m.



M. R. Gonzalez, Secretary/Treasurer



Jerry McGuairt, President

Date Approved 01-17-2017