

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 Allan Childs Jeff Sims Puja Boinpally

Employees

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

Minutes of August 15, 2017

On this the 15th of August, 2017, 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
John Dorris	Vice President, Precinct 3 (Arrived @ 9:38 am)
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
Puja Boinpally	Precinct 2
Weldon Blackwelder	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4
Jeff Sims	City of Iraan
Allan Childs, Jr.	At Large (Arrived @ 11:25 am)

Quorum Present.

Board members absent: Ronald Cooper, Janet Groth and Vanessa Cardwell

Others present: Ty Edwards, Mike Gershon, Dr. Bill Hutchison, Bill Dugat, Gail Reeves, Harvey Gray, Melissa Mills, Paula McGuairt, Brock Thompson, Eddie McCarthy III, Ed McCarthy, Jr., Mike Thornhill, Jeff Williams, Darrell Peckham, Gary Bryant, Glenn Honaker, Buck Benson, Geoff Pike, Sam Cruse, Kaveh Khorzad, Ryan Reed, Mark Harral, Garry Dent, Gerald "Dee" Lyda, Steve Finch, James Cravens, Tommy Ervin, Alan Murphy, Joe Ferrara, Bob Beal, and Jeremy Gonzalez/Fort Stockton Pioneer.

REGULAR BOARD MEETING

- I Call to order regular Board meeting at 9:30 a.m. by President Jerry McGuairt.
- II Comments from public and media. No public comment.
- III Executive Session pursuant to the Texas Open Meetings Act, Sections 551.071 and 551.074 of the Texas Government Code, to consult with our attorney and to deliberate evaluation and duties of District's employees.

An Executive Session was called at 9:32 a.m. by Presiding Officer Jerry McGuairt.

The Executive Session ended at 10:05 a.m. President McGuairt stated that no decisions or votes were made in executive session.

John Dorris arrived at 9:38 a.m. and joined the Executive Session.

The regular meeting reconvened at 10:09 a.m.

IV Consider and/or take action on Personnel Matters Discussed in Executive Session and Annual Review and Compensation of District's Employees.

Weldon Blackwelder made a motion to accept the Performance Evaluation of General Manager Ty Edwards with a correction to #10 (Administration was changed from Excellent to Outstanding). Motion seconded by Jeff Sims. Motion carried unanimously.

V Consider and/or act upon approval of a New Position for a District Field Technician.

Weldon Blackwelder made a motion to give General Manager Ty Edwards the authority to hire, in the future if necessary, a full-time Field Technician once Mr. Harvey Gray retires, and to have the new hire have a 3-Month Ride-along-training with Mr. Gray. Motion seconded by John Dorris. Motion carried unanimously.

WORKSHOP ON PROPOSED BUDGET AND PROPOSED TAX RATE

I Call to Order @ 10:12 a.m. by President McGuairt.

II Workshop to review Proposed Budget for Fiscal Year ending 09/30/2018.

The Proposed Budget for Fiscal Year ending 09/30/2018 did not have any corrections to be made.

III Workshop to review Proposed Tax Rate for 2017.

The Proposed Tax Rate for 2017 was presented at \$0.0249 per \$100 valuation. Meeting dates and times were discussed for the public hearings on the proposed tax rate.

- IV **Adjourn.** President Jerry McGuairt adjourned the two workshops at 10:23 a.m.

NOTE: Agenda items may appear in an order different than the posted agenda.

REGULAR MEETING – CONTINUED

- VI Receive public comments on the District's budget and proposed tax rate for the fiscal year ending 9-30-2018, to comply with the requirements of the District's enabling act, rules, and bylaws; Texas Water Code Chapter 36; and the laws of the State of Texas.

No Public Comment.

- VII Consider and/or approve **Budget for Fiscal Year Ending 09/30/2018 and sign the Resolution to Adopt the Annual Budget.**

Alvaro Mandujano, Jr. made a motion to adopt by resolution the budget for the fiscal year ending September 20, 2018. Motion seconded by Weldon Blackwelder. Motion carried unanimously.

Vote:

For: Blackwelder, Boinpally, Dorris, Gonzalez, Mandujano, McGuairt, and Sims.

Against: None

Absent: Cardwell, Childs, Cooper, and Groth.

- VIII Consider and/or adopt a **Proposed Tax Rate for 2017.**

Alvaro Mandujano, Jr. made a motion that the proposed property tax rate be increased by adoption of a tax rate of \$0.0249 per \$100 valuation. Motion seconded by Weldon Blackwelder. Motion carried unanimously.

Vote:

For: Blackwelder, Boinpally, Dorris, Gonzalez, Mandujano, McGuairt, and Sims.

Against: None

Absent: Cardwell, Childs, Cooper, and Groth.

- IX Consider and/or act upon **Setting Two Public Hearing Dates/Times/Place and set a Meeting Date/Time/Place to Adopt a Tax Rate for 2017.**

Alvaro Mandujano, Jr. made a motion to set the future public hearings to be held at the Middle Pecos Groundwater Conservation District office located at 405 North Spring Drive, Fort Stockton, TX on the following dates and times:

First Public Hearing: August 24, 2017 at 6:30 p.m.

Second Public Hearing: September 7, 2017 at 6:30 p.m.

Alvaro Mandujano, Jr. also motioned to set the Date to Adopt the Tax Rate on September 12, 2017, at 10:00 A.M., at the Middle Pecos Groundwater Conservation District office located at 405 North Spring Drive, Fort Stockton, TX. Motions seconded by Weldon Blackwelder. Motion carried unanimously.

Vote:

For: Blackwelder, Boinpally, Dorris, Gonzalez, Mandujano, McGuairt, and Sims.

Against: None

Absent: Cardwell, Childs, Cooper, and Groth.

PUBLIC HEARING ON PROPOSED RULES

- I Call to order at 10:27 a.m. by President McGuairt.
- II The Middle Pecos Groundwater Conservation District (District) will receive public input at a hearing on proposed amendments to the District's rules intended to (1) change Management Zone 1 boundaries and operating conditions to recognize hydrogeological differences between South Cohanosa and Belding areas; and (2) establish (A) acceptable aquifer level fluctuations and (B) thresholds for pro rata cutbacks when aquifer level declines in certain monitoring wells. **After adjournment of this rulemaking hearing and during the regular Board meeting, the Board will also address the following agenda item:**

Consider and /or act upon proposed rules that were the subject of today's rulemaking hearing, including consideration of all public comment and action on Cockrell Investment Partners, L.P.'s Motion to Declare Contested Case and Refer to SOAH and any other motions or responses to motion(s).

As a matter of record: On August 10, 2017 Cockrell Investment Partners, L.P., the owner of Belding Farms, filed a Motion to Declare the Public Hearing on Proposed Rules a Contested Case and Refer to State Office of Administrative Hearing (SOAH).

MPGCD Attorney Mike Gershon reported that while the Board was in Executive Session, the attorneys for Fort Stockton Holdings (FSH) and the attorneys for Cockrell Investment Partners (Cockrell) asked Mr. Gershon to relate to the Board that those two parties would like to have discussions over the next 60 days on a number of issues that relate to our rule making and relate to the pending requests for reconsideration for party status. The two parties ask the Board to consider abating action on either pleading for the two requests by Cockrell. Mike Gershon recommended to abate consideration of the Cockrell motion to declare as a contested case and refer to SOAH, and proceed to take public comment with Dr. Hutchison during a rule making hearing.

Executive Session pursuant to the Texas Open Meetings Act, Sections 551.071 of the Texas Government Code, to consult with our attorneys Mike Gershon and Bill Dugat was called at 10:34 a.m. by Presiding Officer Jerry McGuairt.

The Executive Session ended at 11:08 a.m. President McGuairt stated that no decisions or votes were made in executive session.

The rule making hearing reconvened at 11:09 a.m.

Puja Boinpally made a motion to abate Cockrell Investment Partners, LP's motion to declare a contested case and refer to SOAH, but we would still like to hear public comment at this time. Motion seconded by Alvaro Mandujano, Jr. Motion passed unanimously.

Dr. Bill Hutchison gave a PowerPoint presentation entitled "*Proposed Changes to Management Zone 1 and Proposed Monitor Well Data and Comparisons with Model Simulations (Draft 1)*". (Note: This PowerPoint presentation was also presented on 07-18-2017 during the Workshop on Proposed Rules. For more detail on the presentation please refer to those minutes.)

Public Comment:

Mark Harral, attorney for the City of Fort Stockton. The City would like to make sure that in the future modeling and even this modeling that you are taking in to account water wells that may be cross contaminating three different aquifers in the Leon-Belding area. Referring to wells that may have eroded casing that would allow comingling of the aquifers.

Ryan Reed, attorney for Cockrell Investment Partners, LP. Mr. Reed commented that he would like the opportunity to present testimony if necessary after talks with FSH.

Pecos County, via attorney Drew Miller of Kemp Smith Law, submitted written comments regarding the Proposed Amendments to the Rules. The technical memo was prepared by INTERA, Inc. (Geoscience & Engineering Solutions).

- III Adjourn Public Hearing on the Proposed Rules.
AT 11:28 a.m. President Jerry McGuairt continued the rule making hearing, until 10 a.m. on October 17, 2017.

REGULAR MEETING – CONTINUED

Note: Director Allan Childs arrived at 11:25 a.m.

- X Consider and/or act upon **Minutes of Regular Meeting and Public Hearings on July 18, 2017.**

John Dorris made a motion to approve the minutes. Motion seconded by Alvaro Mandujano, Jr. Motion Carried Unanimously.

- XI Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending July 31, 2017.**

Weldon Blackwelder made a motion to approve the Treasurer's Report and Line Item Transfers and Accounts Payable. Motion seconded by John Dorris. Motion Carried Unanimously.

- XII Consider and act upon **New Personnel Policy.**

Tabled.

- XIII Consider and /or act upon **"Request for Reconsideration" of party status filed by Cockrell Investment Partners, L.P. in connection with hearing remanded by Eighth District (El Paso) Court of Appeals on Fort Stockton Holding L.P.'s (FSH's) application for a Production Permit and separate hearing on FSH's application to amend/reduce authorized withdrawals under previously issued Historic & Existing Use Permits.**

As a matter of record:

1) 07-28-2017 Cockrell Investment Partners, L.P. Filed a Request For Reconsideration. The request for reconsideration asks the District to reconsider its denial of Cockrell's request for party status and grant its request for party status in any proceeding conducted on FSH's Applications.

2) 08-01-2017 Board President McGuairt issued an order to the parties of the FSH's application for production permit and transport authorization. The order requested a response to Cockrell's Motion for Reconsideration no later than 5:00 p.m. on August 9, 2017.

3) 08-09-2017 Mark Harral, on behalf of the City of Fort Stockton, filed a response. The City believes the request should be denied.

4) 08-09-2017 Ed McCarthy, on behalf of Fort Stockton Holdings, L.P. filed a response. FSH believes the request should be denied.

5) 08-09-2017 Mike Gershon, on behalf of the MPGCD General Manager, filed a response. MPGCD G. M. opposes the request.

Back to the Meeting:

Sam Cruse, attorney for Cockrell, reiterated that two motions have been filed seeking reconsideration of the permits to FSH. Today FSH and Cockrell have discussed and agreed to, with Board's approval, to abate consideration of the motion for reconsideration so that the parties can continue discussion about an agreement. If we are unable to come to an agreement, our plan would be, and subject to Board's approval, to take up the two motions. The motion for reconsideration and also the contested case issue that the Board has already considered. Cockrell is seeking an abatement.

Bill Dugat, MPGCD Board attorney for FSH issues related to the application, recommended to not take any action on this matter, and by not taking action it has the affect of giving the parties more time to work out the potential settlement and at the same time provide consistency with MPGCD rules.

Ryan Reed, attorney for Cockrell, added that the request is a motion to order approving an abatement of both consideration of Cockrell's request for reconsideration as well as abating the statutory rule base deadlines, so that the Board can effectively abate the time period so that the Board does not have to take any actions and no party has to worry about the request being ruled on by operation of law. If abated today, the time calculation would stop today and then start again on October 17, 2017.

Bill Dugat, MPGCD Board attorney, the rules do not specifically address this. An abatement would need all parties to be on the record as being in agreement. (That would be the parties participating today: FSH, Cockrell, MPGCD GM and City of Fort Stockton.)

Mike Gershon: The General Manager agrees with abatement.

Ed McCarthy: FSH is amenable to that plan.

Mark Harral: The City of Fort Stockton is fine with that as long as their motion still stands.

Weldon Blackwelder made a motion to grant the abatement. Motion seconded by Allan Childs. Motion Failed.

Vote: For: Blackwelder, Boinpally, Childs, Gonzalez, and McGuairt.

Against: Dorris, Mandujano, and Sims.

Absent: Cooper, Cardwell, and Groth

(Note: It takes 6 votes to pass or fail a motion.)

Dugat: No action puts in play the 45 day deadline rule by operational law. Then they would have the opportunity to appeal.

Note: Cockrell Investment Partners, LP filed the *Request for Reconsideration* on July 28, 2017. The 45 day deadline would be September 11, 2017.

- XIV Briefing and take action as necessary on matters involving FSH, Republic Water Co. of Texas, LLC (Republic LLC) and Clayton Williams Farms, Inc.'s settlement and following, related lawsuits and contested hearing: **Republic LLC's state court lawsuit**, Court of Appeals Case No. 08-17-00001-CV; **FSHLP v. Pecos County, MPGCD, et al.** (state court administrative appeal), District Court Cause No. P-7047-83-CV; **FSHLP v. MPGCD** (state court takings lawsuit), District Court Cause No. P-7047A-83-CV; **In re the Application of Republic LLC**, State Office of Administrative Hearings Docket No. 959-17-3195.

Mike Gershon reported that:

***Republic LLC's state court lawsuit**, Court of Appeals Case No. 08-17-00001-CV was dismissed.

* **FSHLP v. Pecos County, MPGCD, et al.** District Court Cause No. P-7047-83-CV has been remanded to MPGCD.

* **FSHLP v. MPGCD** (state court takings lawsuit), District Court Cause No. P-7047A-83-CV is pending.

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

- Well Registrations: We have received about 28 Changes of Ownership.
- Drought Monitor Map: The current drought monitor map presented.
- Production Permits: City of Fort Stockton/Blue Ridge
- Drilling Permits: There are requests for small wells.
- Monitor Wells: Working on the 11 monitor wells for FSH.
- Analysis: 41 samples collected in July.

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

- Texas Groundwater Summit: August 29-31, 2017
- August 16, 2017: Brackish Groundwater Production Zones Stakeholder Meeting on the Dockum and Edwards-Trinity Plateau Aquifers will be held in Midland, TX.
- Legislative Update: Larson filed all the bills that didn't pass.

XVII **Directors' comments.** No Directors' comments.

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


Adopt the Tax Rate, City of Fort Stockton Production Permit, and Public Hearings

XIX **Adjourn Board meeting.**

Weldon Blackwelder made a motion to adjourn the meeting. Seconded by Jeff Sims. Motion carried unanimously. The meeting adjourned at 11:54 a.m.



M. R. Gonzalez, Secretary/Treasurer



Jerry McGuair, President

Date Approved 09-12-2017