

MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

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Directors

Jerry McGuairt, President Janet Groth, Vice President M. R. Gonzalez, Secretary/Treasurer
Alvaro Mandujano, Jr. Vanessa Cardwell Ronald Cooper
Weldon Blackwelder Allan Childs Jeff Sims Puja Boinpally Larry Drgac

Employees

Ty Edwards, General Manager
Office: Gail Reeves & Melissa Mills Field Technician: Anthony Bodnar

MINUTES OF REGULAR BOARD MEETING HELD BY VIDEOCONFERENCE AND TELECONFERENCE

May 19, 2020

In accordance with Governor Abbott's declaration of the COVID-19 public health threat and action to temporarily suspend certain provisions of the Texas Open Meetings Act, a quorum of the District's Board of Directors held its regular Board meeting by videoconference call. The public was invited to join this meeting by way of videoconference. Members of the public wishing to make public comment during the meeting were able to register by emailing mpgcd@mpgcd.org prior to 9:30 a.m. on May 19, 2020. A copy of the agenda packet was made available on the District's website at the time of the meeting.

On this the 19th of May, 2020, a Regular Board Meeting was held by the Middle Pecos Groundwater Conservation District with the following members' present:

| | |
|--------------------|--|
| Jerry McGuairt | President, Precinct 1 |
| M. R. Gonzalez | Prec. 2, Secretary/Treasurer |
| Allan Childs | At Large |
| Janet Groth | Vice President, Precinct 1 |
| Puja Boinpally | Precinct 2 |
| Weldon Blackwelder | Precinct 3 |
| Vanessa Cardwell | City of Fort Stockton |
| Jeff Sims | City of Iraan (Joined in at Executive Session) |

Quorum Present.

Members Absent: Larry Drgac, Ronnie Cooper, and Alvaro Mandujano, Jr.

District employees participating: Ty Edwards, Anthony Bodnar, and Melissa Mills.

Others attending via Videoconference: Mike Gershon, Geoff Pike, Buck Benson, Glenn Honaker, Ryan Reed, Kaveh Khorzad, Jeff Williams, Ed

McCarthy, Jr, Brock Thompson, Gary Bryant, Mel Riggs, Mark Tisdale, Darrell Peckham, Zachary Swick, Kirby Warnock, Jason Hill, Jim Cravens, James Craven, Carl Craigo, Collin Wood, Scott Hibbs, Allison Strube, Mark Herral, and someone showing up as PCWC3.

REGULAR BOARD MEETING

- I Call to order regular Board meeting at 10:04 a.m. by President Jerry McGuairt.
- II Comments from **public and media**: None at this time—Kirby Warnock allowed to make comment under Agenda Item VI.
- III Consider and/or act upon **Minutes of Regular Meeting on March 24, 2020**.
Allan Childs made a motion to approve the minutes of March 24, 2020, as presented. Motion seconded by M. R. Gonzalez. Motion carried.
Vote: 8 For. -0- Against. 3 Absent.
- IV Consider and/or act upon **Treasurer's Report for the Month Ending March 31, 2020**.

Janet Groth made a motion to approve the Treasurer's Report for the month ending March 31, 2020 as presented. Motion seconded by Allan Childs. Motion carried. Vote: 8 For. -0- Against. 3 Absent.
- V Consider and/or act upon **Treasurer's Report for the Month Ending April 30, 2020**.

Allan Childs made a motion to approve the Treasurer's Report for the month ending April 30, 2020 as presented. Motion seconded by Janet Groth. Motion carried. Vote: 8 For. -0- Against. 3 Absent.
- VI Briefing and take action as necessary regarding **7D area and continued Kent and Luna permit hearings**.

No substantial update. Mr. Luna has moved in a 'poly tank' and hauls water to the tank for his domestic use. Mr. Kent has hooked up to one of Jerry Gordon's wells for his water.

Pecos County WCID#1 update from Kristen Fancher is that the title insurance company out of Florida has hired a Texas title attorney.

Public Comment: Kirby Warnock voiced concern about 40 to 50 more requests for water well drilling in this same area that could possibly be submitted.

Note: The following agenda items (IX and X) were taken up in an order different than what was posted. The items in the minutes appear in the order in which they were considered.

IX Consider and/or act upon participation in the Groundwater Management Area 7 donation to the 4-H Ambassador Program of \$250.

The 4-H Water Ambassadors gain advance knowledge and develop leadership skills related to the science, technology, engineering and management of water in Texas. 4-H Water Ambassadors accept the responsibility of educating youth and adults in their communities and beyond. They are committed to advancing their understanding of water throughout their term of service.

Our contribution of \$250 will be combined with 22 other Groundwater Conservation Districts in Groundwater Management Area 7 for a combined \$5,000 sponsorship level.

Janet Groth made a motion to approve the participation in the Groundwater Management Area 7 donation to the 4-H Water Ambassadors Program in the amount of \$250. Motion seconded by Puja Boinpally.

Motion carried. Vote: 8 For. -0- Against. 3 Absent.

X Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, Drought Monitor Map, Water Quality Analysis and General Manager's Correspondence.

- * Pecos County Tax Appraisals: Even with the recent downturn in the oil and gas industry, our estimated tax valuations will remain about the same as last year. The downturn may not be reflected until next year's valuations. On a positive note, in next year's valuations there will be 2 or 3 more solar facilities on-line.
- * Drought Monitor: The drought monitor report is submitted in Board Information. Pecos County is currently out of drought.
- * Water Quality Analysis: Water analysis samples are being pulled during pump tests.
- * 2020 Texas Groundwater Summit: MPGCD will reserve 5 rooms for the upcoming Summit.
- * Texas Governor's Disaster Proclamation: On May 12, 2020 Texas Governor Greg Abbott issued a proclamation renewing the declaration stating that the novel CoronaVirus (COVID-19) poses an imminent threat of disaster for all counties in Texas. For MPGCD this means we have another 30 days for remote meetings.

- * June 2020 Board Meeting: The June meeting will be an in-person meeting hopefully. Several meetings will take place in the day(s) before and after the June meeting.
- * Klose upcoming permit: Mr. Klose owns 3 sections in Coyanosa. There are over 20 existing water wells. The land is currently being used for the oil & gas industry, but will soon be covered with solar facilities. Mr. Wood has leased this property and will come in and apply for industrial permits.
- * City of Fort Stockton: In the area of 7-D Road and Moody Road, the City of Fort Stockton will be opening a new landfill. While working the area and clearing brush, a well was found. This large irrigation well was drilled after the springs quit flowing. The well is not registered or permitted. We ran a camera down the well and found holes in the pipe, and as a result I am going to require them to concrete that in just behind the casing to make sure nothing is running into the well bore due to the fact that the well is at a landfill. They have agreed to this. The permit request will be 20 acre feet or less.
- * RigData Report: The report shows 5 rigs in Pecos County.

NOTE: Returning to Agenda Items VII and VIII (addressed together), then Executive Session, and back to VII and VIII, followed by agenda items XI and XII

- VII Briefing, discussion and act if necessary on guidance to General Manager on his authority under District Rule 11.8 regarding **Fort Stockton Holdings, L.P.'s application for permit renewal.**
- VIII Briefing and take action as necessary on **Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District**, Cause No. P-12176-112-CV (Pecos County District Court).

Briefing from Mike Gershon, MPGCD attorney:

With respect to Agenda Item VII, explained District Rule 11.8 on renewal and applicable statute, including General Manager's decision and notice to permit holder, opportunity for permit holder to object to General Manager's decision, General Manager's notice to Board of Directors, and Board's opportunity to act on renewal. Based on timeline, General Manager ought to issue decision by late May with item on Board's June agenda. FSH's permit term expires in mid-July 2020.

With respect to Agenda Item VIII, a pretrial conference is set in Pecos County District Court in July regarding Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, Cause No. P-12176-112-CV, at the request of Judge Gomez as a matter of Court policy when addressing the Court's dismissal docket on dormant cases. Lawsuit has been abated to allow the parties to attempt settlement. On May 11, 2020 Cockrell Investment Partners, L. P.

attorneys suggested continuation of the abatement for more settlement discussion and sent a draft motion to push out what they are proposing and a discovery and trial schedule.

Ty Edwards, MPGCD General Manager, reported that Fort Stockton Holdings, L.P. had filed the permit renewal request on 04-02-2020.

Comments from Ed McCarthy, Jr., attorney for Fort Stockton Holdings, L.P.(FSH):
Earlier this year we filed a letter request with the District stating that FSH would like to renew the permit as it was issued 3 years ago with the same permit conditions and terms as are in the permit as issued. We are not seeking any amendments to the permit.

Comments from Ryan Reed, attorney for Cockrell Investment Partners, L.P. (Cockrell):

Regarding agenda item VIII, we have spoken to the District Court and because of the situation with COVID-19 (CoronaVirus), the Court is pushing off hearings and deadlines for a period of time, several months at least, until their docket is manageable. For this reason, I do not have any comment on the continuance of the abatement.

Cockrell is interested in continuing a dialogue with FSH and the District in the interest of a settlement. Regarding agenda item VII, Cockrell's position is that the District needs to implement rules for management zone 1 that are protective of the historic lows that the aquifer has seen. If we are to surpass and test the aquifer to see its capacity and the water quality below historic lows, there needs to be a framework implemented where the District is gathering data and testing the limits on the aquifer in a controlled fashion. Cockrell relies on the aquifer for the pecan orchard, and if the water is not available during the summer months when needed to irrigate, that will have devastating consequences on both the crop and Belding Farms. We are interested in seeing rules being implemented that collect additional data, and protect the water in the summer months. We are in discussions with FSH about proposals and rule amendments.

Ryan Reed presented a PowerPoint presentation to aid in his discussion about Agenda item VII comments.

FSH's Permit and Supply Contract:

- Issued pursuant to Settlement Agreement between MPGCD and FSH (April 28, 2017)
- Permit effective as of July 18, 2017
- Permit Term: Three Years as provided for in Texas Water Code section 36.122(i)(1)

- TWC 36.122(i)(1): “The period specified shall be...at least three years if construction of a conveyance system has not been initiated prior to the issuance of the permit.”
- Location of Use: Within TWDB's State Water Plan “Region F”
- City of Midland Groundwater Supply Agreement and related Interlocal Agreement contemplate:
 - City will design, construct, operate, measure and maintain infrastructure to produce, deliver, treat, and supply water
 - Water will be supplied to Abilene (“Region G”)

Some of these recent developments do not tract the original permit.
Renewal of a Production and Export Permit:

- The conditions of TWC 36.122(i) have not been satisfied.
 - No construction of a conveyance system.
 - Groundwater Supply Agreement demonstrates this is exclusively Midland's obligation.
- TWC 36.122(i)(1) Permits have a statutory renewal mechanism.
 - Construction of a conveyance system.
 - TWC 36.122(i)(1) does not cite back to TWC 36.1145 (renewal statute).
- TWC 36.122(i)(2) Permits have a statutory renewal mechanism.
 - TWC 36.122(i)(2) cites back to TWC 36.1145 (renewal statute).
- TWC 36.1145 governs production permits and TWC 36.122(i)(2) permits only.
- MPGCD can renew the production permit under TWC 36.1145, but cannot renew the export component under TWC 36.122(i)(1). FSH must reapply for a TWC 36.122(i)(1) permit and consideration must be given to the TWC 36.122(f) factors.

Bottom line: Cockrell's position is that the application to renew the permit is not the proper vehicle to do so. A new application needs to be filed relating to the export. As water is to be exported and used out of the District, it is incredibly important that rules are implemented that protect the aquifer and protect all parties so they can use their permitted water. If we exceed and test the capacity of the aquifer, we should do so in a conservation-minded manner that protects the rights of all users.

Comments from Ed McCarthy, Jr., attorney for Fort Stockton Holdings, L.P.(FSH):

Mr. McCarthy stated that he believes that Mr. Reed is misinterpreting the law. On May 12, 2020, FSH did enter into agreements with the City of Midland with respect to the water. Midland has a separate interlocal with the cities in the West

Texas Water Partnership Group, and with Abilene to the extent that there is an addition in the event that it is needed at some point in the future. If you bring water to Abilene, that will be addressed separately from this renewal application. FSH has everything in order that we need for the renewal authorization and export authorization. He believes renewal is an administrative matter and that there will not be a hearing on the application.

Mike Gershon, MPGCD attorney: Last night just before midnight we received a filing from Cockrell titled "Request for Party Status". Mr. Reed filed this claiming a justiciable interest in the event that there is a hearing.

An Executive Session was called at 11:04 a.m. by Presiding Officer Jerry McGuairt pursuant to the Texas Open Meetings Act, Sections 551.071 of the Texas Government Code, to consult with attorney.

Note: Jeff Sims joined the meeting at this time.

The Executive Session ended at 12:49 p.m. President McGuairt stated that no action was taken in executive session.

Regular session reconvened at 12:52 p.m.

Continue with Agenda item VII:

Mike Gershon, MPGCD attorney: It is not critical that action be taken. The Board has discretion to share with the General Manager what their view is on our permit renewal rule and the statute that our rule is implementing. But, there is no action required. Our rules don't indicate that the Board takes action at this juncture. The Board will receive notice on the General Manager's decision before the next Board Meeting. At the June meeting the Board will have discretion to address the General Manager's decision and overrule it to make changes if they so choose.

VIII Briefing and take action as necessary on **Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District**, Cause No. P-12176-112-CV (Pecos County District Court).

Briefing from Mike Gershon, MPGCD attorney: As noted earlier this morning, a pretrial conference is set in July. The lawsuit has been abated since initially filed in 2017. On May 11, 2020 Cockrell's attorney requested to continue the abatement and sent a draft motion to push out what they are proposing and a discovery and trial schedule.

The July hearing and date were set at the Judge's request. We hear from Cockrell that due to COVID-19 (CoronaVirus) the July hearing date may not be realistic. At that hearing we would let the Court know that we would like to have a hearing on our pending plea to the jurisdiction. FSH has made public that they would like to intervene and would need time to submit their filings.

Ed McCarthy, Jr., attorney for Fort Stockton Holdings, L.P. (FSH): FSH offered comment about its participation whether or not there is abatement.

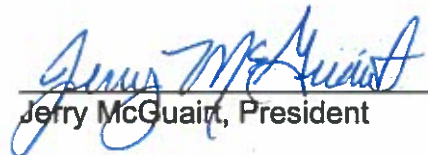
Jeff Sims made a motion to not abate the pending litigation with Cockrell Investment Partners, and to pursue the case and pursue a hearing on our pending plea to the jurisdiction. Janet Groth seconded the motion. Motion carried. Vote: 6 For. 2 Against. 3 Absent.

XI **Directors' Comments** and consider and/or act upon **agenda for next meeting**. The June meeting will hopefully be an in-person meeting. We will try and reserve the Pecos County Courthouse second floor for the meeting. There may be 2 permit hearings ready, and the FSH permit renewal will be on the agenda, and Dr. Bill Hutchison will be here to give an update on his model. There will be an agenda item to call for the November election.

XII **Adjourn Board meeting**. Allan Childs, Jr. made a motion to adjourn the meeting. Motion seconded by M. R. Gonzalez. Motion carried unanimously. Meeting adjourned at 1:12 p.m.



M. R. Gonzalez, Secretary/Treasurer



Jerry McGuair, President

Date Approved 06-16-2020