

## 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 AND PUBLIC HEARING HELD BY VIDEOCONFERENCE AND TELECONFERENCE

### July 14, 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 and call-in. The public was invited to join this meeting by way of videoconference and toll-free call-in. Members of the public wishing to make public comment during the meeting were able to register by emailing [mpgcd@mpgcd.org](mailto:mpgcd@mpgcd.org) prior to 9:30 a.m. on July 14, 2020. A copy of the agenda packet was made available on the District's website at the time of the meeting.

On this the 14<sup>th</sup> of July, 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, Sec./Treasurer (Arrived at 10:22 a.m.)
Janet Groth	Vice President, Precinct 1
Puja Boinpally	Precinct 2
Weldon Blackwelder	Precinct 3
Larry Drgac	Precinct 3
Ronnie Cooper	Precinct 4
Vanessa Cardwell	City of Fort Stockton
Jeff Sims	City of Iraan (Joined in at Executive Session)
Allan Childs	At Large

Quorum Present.

Member Absent: Alvaro Mandujano, Jr.

District employees and consultants participating: Ty Edwards, Gail Reeves, Anthony Bodnar, Melissa Mills, Dr. Bill Hutchison, Allan Standen, and Mike Gershon.

Others attending via Videoconference: Geoff Pike, Buck Benson, Glenn Honaker, Ryan Reed, Zachary Swick, Jeff Williams, Ed McCarthy, Jr, Brock Thompson, Gary Bryant, Mel Riggs, Mark Tisdale, Darrell Peckham, James Craven, and Ernest Woodward

I Call to order regular Board meeting at 10:02 a.m. by President Jerry McGuairt.

II Comments from **public and media**: No comments.

III Consider and/or act upon **Minutes of Regular Meeting on June 16, 2020.**

Agenda item VI in the June 16, 2020 minutes needs a correction to say:  
No new updates.

Janet Groth made a motion to approve the minutes of June 16, 2020, with the correction. Motion seconded by Larry Drgac. Motion carried unanimously.

#### **PUBLIC HEARING ON AMENDMENTS TO MANAGEMENT PLAN**

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

II Public hearing to receive public input on proposed Amendments to Management Plan.

No public comment received.

III Adjourn. President Jerry McGuairt adjourned the hearing at 10:14 a.m.

#### **REGULAR BOARD MEETING – CONTINUED**

IV Consider and/or act upon **Treasurer's Report for the Month Ending June 30, 2020.**

General Manager Ty Edwards presented the Treasurer's Report to the Board. He announced that there is not a credit card recap because our meeting is being held a week early.

Ronnie Cooper made a motion to approve the Treasurer's Report for the Month Ending June 30, 2020. Seconded by Allan Childs, Jr. Motion carried unanimously.

M. R. Gonzalez joined the meeting at 10:22.

V Consider and review **2020-2021 draft budget.**

General Manager Ty Edwards presented the draft budget for the fiscal year ending 09-30-2021. He announced that the next Board meeting will have a Budget Workshop and Hearing to adopt the Budget and Proposed Tax Rate.

VI Consider and/or act upon **2020 Amendments to Management Plan.**

Dr. Bill Hutchison made the Board aware that the Management Plan is in a format that is consistent with the Texas Water Development Board's checklist to achieve administrative completeness. By adopting the Management Plan today, we will be on track to meet the September 2020 deadline to have the Management Plan complete and submitted to TWDB.

Ronnie Cooper made a motion to approve the Management Plan along with the Resolution, and send it to Texas Water Development Board for their review and approval. Motion seconded by M. R. Gonzalez. Motion passed unanimously. Vote: 10 FOR. -0- Oppose. 1 Absent.

VII Consider and/or act on **Cockrell Investment Partners, L.P.'s (Cockrell's) pending motion for contested case hearing and referral to State Office of Administrative Hearings (SOAH) on District's proposed rules (filed August 10, 2017).**

**AS A MATTER OF RECORD:**

On 08-15-2017, MPGCD had a rulemaking hearing on the proposed rules 10.5(a) and 10.5(b). The minutes of 08-15-2017 reflect that on 08-10-2017 Cockrell Investment Partners, L.P. (Cockrell) filed a Motion to Declare the Public Hearing on Proposed Rules a Contested Case and Refer to the State Office of Administrative Hearing (SOAH). During the public hearing on 08-15-2017 the attorneys for Fort Stockton Holdings (FSH) and the attorneys for Cockrell Investment Partners (Cockrell) asked Mr. Gershon to relate to the Board that the two parties would like to have discussions over the next 60 days on a number of issues that relate to the rulemaking and relate to the pending requests for reconsideration for party status. The two parties asked the Board to consider abating action on either pleading for the two requests by Cockrell, which the Board did. Obviously 3 years have passed and there is no resolution.

On 06-16-2020, the Board took action on 10.5(a), which changed the Management Zone 1 (MZ1) boundaries as presented on 08-15-2017. Last month there was some discussion about whether or not back in 2017 the hearing had actually adjourned. Last month during the in-person meeting, Cockrell initially complained about the District moving forward without having properly handled the procedure, but then indicated that it was not objecting. Over the past couple of days and again today, Cockrell stated that it had no substantive objection to the Rule 10.5(a) rules changes. Based on a review of the unique circumstances in 2017, the importance of carefully following procedure, and input from the General Manager and legal counsel, the Board will consider the action

taken on 06-16-2020 to require further action by the Board, including a future rulemaking hearing to address the 2017 hearing that was continued, and to attend to the Management Zone 1 boundaries.

No action taken.

**VIII Consider and/or act regarding rules acted on at June 16, 2020 Board meeting and future workshop(s) and/or hearing(s) on proposed rules.**

Based on a review of the unique circumstances of the rulemaking hearing in 2017 (reference VII above), Cockrell's request for continuance in 2017 to engage in settlement discussions with Fort Stockton Holdings, the importance of carefully following procedure, and input from the General Manager and legal counsel, the Board will consider the action taken on 06-16-2020 to require further action by the Board, including a future rulemaking hearing to address the 2017 hearing that was continued, and to attend to the Management Zone 1 boundaries.

As discussed in the previous agenda item and at our previous Board meeting, a rulemaking hearing and subsequent opportunity for the Board to take action at a Board meeting will be announced in the near future to address management zone boundary lines. Beyond management zone boundary changes, at this time we anticipate future workshop(s) on the proposed rules that would address potential procedural and substantive requirements for management within Management Zone 1.

No action taken.

**IX Consider and/or act on Cockrell's Request for Reconsideration regarding third-party party status concerning Fort Stockton Holdings, L.P.'s (FSH's) Application for Permit Renewal (filed July 6, 2020).**

**Ryan Reed, attorney for Cockrell Investments Partners, L.P.**

On 05-18-2020 Cockrell Investment Partners, L.P. (Cockrell) filed a Request for Party Status. On June 16, 2020 Cockrell argued that the renewal of the export permit is void and against the statute, and that the District's consideration of the renewal application should have allowed for third parties including Cockrell to participate in a contested hearing on that renewal; therefore, Cockrell was reurging its request for party status. (Note: The MPGCD Board did not consider the FSH application for permit renewal to require a contested hearing for multiple reasons and, therefore, the request for party status was not considered and no action was taken.)

On July 6, 2020, Cockrell Investment Partners, L.P. filed a request for reconsideration of party status concerning Fort Stockton Holdings, L.P.'s application for permit renewal. Cockrell again requested to be heard, and requested party status and to consider the renewal application a contested matter. Cockrell argued that that the Board should follow the legal authority cited by Cockrell and claimed that the Board and General Manager were not properly acting on the request to renew the permit.

**Ed McCarthy**, Fort Stockton Holdings, LP attorney:

As there was not a hearing on 06-16-2020, Mr. McCarthy recommended that the request for reconsideration be denied.

An Executive Session was called at 11:12 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.

The Executive Session ended at 11:58 a.m. President McGuairt stated that no action was taken in executive session.

Regular session reconvened at 12:00 p.m.

Continue with Agenda item IX: No action taken.

- X Consider and/or act on **Cockrell's Request for Findings and Conclusions regarding FSH's Application for Permit Renewal** (filed July 6, 2020).

This agenda item was considered along with agenda item IX.

No action taken.

- XI 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).

Honorable Judge Pete Gomez signed an order on October 11, 2019, to set a Rule 166 Pretrial Conference on the non-jury docket for July 27, 2020 at 10 a.m. in District Court in Fort Stockton, as Judge Gomez requested and after consideration of the *Unopposed Request to Remove Case from October 16, 2019 Dismissal Docket Pursuant to Rule 11 Agreement* was filed by plaintiff Cockrell Investment Partners, L.P.

Judge Gomez's court coordinator has informed us that due to illness, the conference date may change, and/or a visiting Judge may be called upon. The purpose of the hearing is in part because Judge Gomez wanted a pretrial conference – that is the Court's standard policy when a matter is on the dismissal docket. This case was on the dismissal docket because it had sat dormant for 2 years when the Court placed it on the dismissal docket in mid-2019. The other purpose of the hearing is to provide an opportunity to discuss any matters under Texas Rule of Civil Procedure 166. Rule 166 allows the Court and parties to address preliminary issues such as discovery disputes, what the nature of the case is about (and we have a dispute about that), and how the case should proceed. We believe that the case is an administrative appeal and should provide a briefing schedule. Cockrell Investment Partners is of the opinion that this is more of a traditional type case and should have a more traditional typical type of procedural schedule for a typical civil case. We will address that with our Judge, and will get the Judge's guidance on how the case should proceed. The conference is predicted to take about 30 minutes, and be conducted remotely.

No action required. No action taken.

**XII Consider and/or act upon Order of General Election for November 3, 2020.**

Janet Groth made a motion to Order an Election to be held on November 3, 2020. President Jerry McGuairt will sign the order. Motion seconded by Ronnie Cooper. Motion passed unanimously.

Vote: 10 FOR. -0- Oppose. 1 Absent.

**XIII Consider and/or act regarding compliance with and/or exemption from recently adopted Texas Commission on Environmental Quality rules regarding recycling and associated statutory requirements.**

TCEQ Recycling Requirements for Governmental Entities

Reference: Texas Secretary of State, Title 30, Part 1, Chapter 328 Waste Minimization and Recycling.

On June 10, 2020, TCEQ adopted rules requiring governmental entities to establish a recycling program and purchasing preferences for products made of recycled materials. The rules include an exemption available to governmental entities if compliance with the recycling program or purchasing preferences will create a hardship or if the local solid waste provider(s) do not offer recycling services. These rules were adopted in response to provisions previously added to the Texas Health & Safety Code that mandate TCEQ to adopt such rules, as well as amendments to those requirements made during the 86th Legislative Session (SB 1376) to allow for exemptions. The effective date of the rules is July 2, 2020. GCDs, as governmental entities, should be prepared to comply with these rules or to request an exemption from TCEQ.

M. R. Gonzalez made a motion delegating authority to the General Manager, Ty Edwards, to comply with the law. This includes seeking an exemption from TCEQ if necessary. Motion seconded by Puja Boinpally. Motion passed unanimously. Vote: 10 FOR. -0- Oppose. 1 Absent.

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

- \* Drought Monitor: The drought monitor report is submitted in Board Information. Pecos County is currently out of drought, but getting drier.
- \* Clayton Mill Project: Drilled a 3" X 8' hole and installed a grounding rod.
- \* Groundwater Management Area #7: GMA7 meeting was cancelled and moved to virtual so we will be meeting on Wednesday at 9 am.
- \* Well Registrations: Since 07-13-2020 our total registrations 3,280. 963 of those are Non-Exempt Wells and 2,317 Exempt wells.
- \* City of Fort Stockton: They have applied for a small well for their new landfill. We went and ran a camera in the hole, and found small holes about 50 feet down that will need to be sealed/plugged to prevent aquifer contamination. It is an old irrigation well, and will be used for dust control and other.

- \* 2020 Texas Groundwater Summit: The San Antonio venue has been cancelled, and the summit will be virtual.
- \* Election 11-03-2020: The deadline to file is July 18<sup>th</sup> thru August 17<sup>th</sup>.
- \* Corona Virus: The Governor renewed the disaster declaration for the Corona Virus. Our County Judge did file for the exemption from the mask order.
- \* Texas Water Trade: Sharlene Luerig is involved with a virtual tour of the Pecos River which I will attend and talk about the Pecos River and Red Bluff area.
- \* New Well Camera: The cost estimate for a new well camera is \$56,146.50.

XV **Directors' Comments** and consider and/or act upon **agenda for next meeting**.  
 General Manager, Ty Edwards: We will have a Budget Workshop/Hearing and adopt a budget, and adopt a proposed tax rate, and set a public hearing for the proposed tax rate and adoption. Our regular meeting is August 18<sup>th</sup> and we should have a production permit hearing for the City of Fort Stockton.

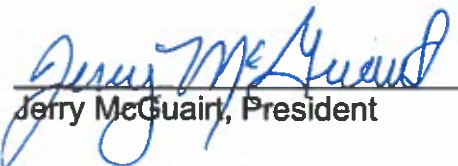
Director Comments:

Janet Groth noted that even though we have not taken any action on the items of the Cockrell agenda items, that we have discussed the scientific matters with our hydrogeologists, and that we think that we have a good understanding of the issues involving the aquifers underlying the area around the Pecan Farm, and that we believe that we have set up precautions and rules and regulations, and are about to invest in more monitoring and conduct more studies in that area, so that their interests are protected. Director Groth was of the opinion that the sticking point appears to be over the stakeholders getting on the same page about the science. She did not know where we go from here to get them on the same page. She commented that going to the courthouse does not seem necessary all the time. She suggested that perhaps a 3<sup>rd</sup> party hydrogeologist whom everyone believed was neutral and objective could come in if that would help. She was open to discussing this if any stakeholder wanted to talk with her about how she believes their interests are protected.

XVI **Adjourn Board meeting.**

Allan Childs, Jr., made a motion to adjourn the meeting. Motion seconded by Larry Drgac. Motion carried unanimously. The meeting adjourned at 12:05 p.m.

  
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 M. R. Gonzalez, Secretary/Treasurer

  
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 Jerry McGuair, President

Date Approved 08-18-2020