

# 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 Field Technician: Anthony Bodnar

## MINUTES OF REGULAR BOARD MEETING AND HEARINGS

May 16, 2023

405 North Spring Drive, Fort Stockton, Texas

A quorum of the District's Board of Directors held its regular Board meeting and hearing in person with videoconference optional for the public and less than a quorum of the Board. Members of the public wishing to make public comment during the meeting or hearing were able to register by emailing [mpgcd@mpgcd.org](mailto:mpgcd@mpgcd.org) prior to 9:30 a.m. on May 16, 2023.

On this the 16<sup>th</sup> of May 2023, a Regular Board Meeting and Hearing were held by the Middle Pecos Groundwater Conservation District at the District's office at 405 North Spring Drive, Fort Stockton, Texas, with the following members present in person:

Jerry McGuairt	President, Precinct 1
Janet Groth	Precinct 1
Puja Boinpally	Precinct 2
Alvaro Mandujano, Jr	Precinct 4
Ronald Cooper	Precinct 4
Jeff Sims	City of Iraan
Allan Childs	At Large

Quorum Present

Members Absent: M.R. Gonzalez, Vanessa Cardwell, Larry Drgac and Weldon Blackwelder

District employees and consultants participating: Ty Edwards, Gail Reeves, Bill Hutchison, Anthony Bodnar, Vince Clause, Allan R. Standen, Ty Embrey, and Mike Gershon.

Others attending: Natalie Kincaid, James Kincaid, Thomas C. Kincaid, Dru Kincaid Glen McCorkle, Paula McGuairt, Carl Craigo, Ed McCarthy, Mark Tisdale, Ryan Reed, Geoff Pike, Matt Trela, Zach Swick, Neill Woodward, Schuyler Wight, Gil Van Deventer, Kenneth Heritage, Buck Benson, Jeff Williams, Glenn Honaker, and David Robbins.

## REGULAR BOARD MEETING

I Board Meeting called to order at 10:00 a.m. by President Jerry McGuairt and roll call was taken.

II Comments from **public and media**: Comments were provided on each agenda item. Ryan Reed and Schuyler Wight signed up to speak.

III Consider and/or act to approve **Minutes of Regular Meeting on April 18, 2023**.

The draft Minutes were emailed to the Board prior to the meeting. Jeff Sims made a motion to approve the Minutes for the meeting of April 18, 2023, as presented. Motion seconded by Ronald Cooper.

Motion passed. Vote: 7 FOR -0- Oppose 4 Absent 0 Abstain

Item IV and XII were taken out of order.

V Consider and/or act upon **Treasurer's Report for the Month Ending April 30, 2023**.

General Manager Ty Edwards presented the Treasurer's report to the Board. Ronald Cooper made a motion to approve the Treasurer's Report ending April 30, 2023, as presented. Motion seconded by Allan Childs.

Motion passed. Vote: 7 FOR -0- Oppose 4 Absent 0 Abstain

VI Update on **San Andres well plugging initiative**.

The Board discussed the ongoing efforts with the abandoned well problems in the Imperial area. Representative Murr and Senator Blanco have filed HB 4256. This bill creates a 2-year grant program with \$40 Million available for well plugging in Pecos County. The bill is waiting for a Senate hearing in the Finance committee and hope to have a hearing before the deadline.

Efforts continue at the RRC to plug several of the wells. The District is awaiting a hearing before the Commission to hopefully plug several of the wells with State Plugging Funds.

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

- 05-12-2023 Rig Data Report Pecos County
- 2022 Annual Cloud Seeding Report
- 2023 Estimated Tax Values
- 05-09-2023 Pecos County Drought Map
- DFC Compare Report 2023
- Diamond Y Spring Monitoring Network
- Update on geology on Longfellow Ranch Area on Puckett Road

**REGULAR BOARD-Recessed at 10:30 am**

**PUBLIC HEARING ON  
DRILLING PERMIT APPLICATION FOR THOMAS C. KINCAID**

- I Call to order at **10:30 a.m.** the public hearing on **Application for a Drilling Permit Thomas C. Kincaid.**

Party representing application: Thomas C. Kincaid

Protestant to application: None

Public Comment: Mr. Robbins is concerned with his livestock water and just wants to make sure his ranch has water too.

General Manager Ty Edwards presented the application to the board. Thomas C. Kincaid, Jr has made an application for a Drilling Permit with the Middle Pecos Groundwater Conservation District for 1 well. The well is located on Property Id # 9807, Legal Description: 4740 135 T&STL Sec 3 N/2, approximately 15 miles Southeast of Fort Stockton on US Highway 285, in Pecos County, Texas.

The well is projected to be 600-700 feet in depth and drilled into the Edwards Trinity Aquifer. The estimated rate of withdrawal is 300-500 gallons per minute and the purpose of the well will be for Irrigation Use. The applicant intends to establish a 90-acre native seed plot to perpetuate native grasses to be followed by limited cattle grazing. The application is administratively complete.

Once the well is drilled a pump test is required to determine flow rate. A production permit will need to be submitted after the pump test is complete.

- II Adjourn Hearing and consider and/or act on **Application for a Drilling Permit for Thomas C. Kincaid.**

President Jerry McGuairt adjourned the hearing at 10:42 a.m. Janet Groth made a motion to approve the drilling permit application from the Edwards Trinity Aquifer as presented. Motion seconded by Puja Boinpally.

Motion passed. Vote: 7 FOR -0- Oppose 4 Absent 0 Abstain

**PUBLIC HEARING ON  
APPLICATION TO AMEND AN EXISTING PRODUCTION PERMIT FOR WAHA GAS  
STORAGE, LLC<sup>3</sup>**

- I Call to order at **10:43 a.m.** the public hearing on **Application to Amend Existing Production Permit for Waha Gas Storage, LLC.**

Party representing application: Matthew Trela

Protestant to application: None

Public Comment: Schuyler Wight made comments concerning the use of the Capitan Reef in Ward and Pecos County. It's an important resource and wants to make sure we protect the aquifer.

General Manager Ty Edwards presented the application to the Board. Waha Gas Storage, LLC has made an application to Amend an Existing Production Permit with the Middle Pecos Groundwater Conservation District. The existing wells are located on Property Id# 4660, Legal Description: 238 8 H&GN Sec 89, approximately 1.75 miles west of Intersection of FM 1450 and State HWY 18, in Pecos County, Texas.

The application requests authorization to increase production to 2,742 acre-feet a year. The application currently authorizes production for 1,000 acre-feet a year from the Capitan Reef Aquifer for Industrial Use. The application is administratively complete.

- II Adjourn Hearing and consider and/or act on **Application to Amend Existing Production Permit for Waha Gas Storage, LLC.**

President Jerry McGuairt adjourned the hearing at 10:56 a.m. Jeff Sims made a motion to approve the Application to Amend as presented from the Capitan Reef Aquifer. Motion seconded by Alvaro Mandujano, Jr.

Motion passed. Vote: 7 FOR -0- Oppose 4 Absent 0 Abstain

**REGULAR BOARD- CONTINUED at 11:02 am**

President Jerry McGuairt recessed the Regular Board meeting at 11:03 a.m. and called an Executive Session. Pursuant to Section 551.071 of the Texas Government Code, the Board will consult with its Attorney on Items 8,10 and 11. Any action on this matter will be taken in open session only if the action relates to an agenda item that is posted on today's agenda.

The Executive Session adjourned at 11:42 p.m.

The presiding officer, President Jerry McGuairt, stated that no action, no decisions, and no votes were made in executive session.

**REGULAR BOARD- CONTINUED at 11:47 am**

**IV Consider and/or act upon Export Fee Agreement with Waha Gas Storage, LLC.**

The Export Fee agreement was agreed upon by the District and the Applicant. The agreement changes the export fee to \$0.025 per 1000 gallons transported out of county. Alvaro Mandujano, Jr. made a motion to approve the export fee agreement, as presented. Motion seconded by Allan Childs.

Motion passed. Vote: 7 FOR -0- Oppose 4 Absent 0 Abstain

**VII State legislative update (88<sup>th</sup> Legislative Session commencing January 10, 2023).**

Ty Embrey gave the Board an update on groundwater legislation and where we are in the process. All Groundwater and Local Government Bills are being tracked. HB 4256 is set for a hearing on Thursday in the Senate Finance Committee. Looks like the funding has been moved down to \$10 Million total dollars.

**VIII Briefing, discussion and act if necessary on General Manager's decisions on renewal/nonrenewal of production permit authorizing export of Fort Stockton Holdings, L.P.**

General Manager, Ty Edwards, sent a letter to FSH renewing the 3-year permit on May 8, 2023. FSH did not challenge the decision.

Mike Gershon informed the Board that they could overrule the renewal. The Board deliberated and appeared to agree with the renewal with no motions offered to overrule the General Manager's decision.

Ryan Reed, Attorney for Cockrell Investment Partners, L.P.:

He does not believe that this Board or Mr. Edwards has the authority under the Texas Water Code to renew the export component of the FSH permit. Texas Water Code 36.1145 does not govern the automatic renewal of the FSH permit. In his opinion, Texas Water Code 36.122 (i)(1) provides that for the export permit to be renewed there must be commencement of construction of a conveyance system. FSH has not commenced construction of the conveyance system. The deal that FSH reached with the City of Midland expressly provides that the City of Midland is going to be responsible for the entire construction of the conveyance system, which has not yet commenced.

Mike Gershon: The District received Cockrell Investment Partners' written briefing, which requests party status and a hearing. To be clear, we are not having a hearing today on the renewal. Our interpretation of the statute is that we are not

supposed to have a hearing unless we are going to initiate changes to the permit or there is another reason for nonrenewal as specified in the statute. The District's rules implement the statute by delegating authority to the General Manager to act on the application, subject to Board review. The Board does not have to act to approve the General Manager's decision. The only action item for the Board is to overrule the General Manager's renewal if the Board believes that to be appropriate.

Ed McCarthy summarized FSH's filing with the District and position on the applicability of Texas Water Code Sections related to renewal and export authorization. There was substantial discussion among Mr. McCarthy, Mr. Reed, and Mr. Gershon, and the Board and General Manager.

President Jerry McGuairt declared that No Action was taken.

**IX Update on Fort Stockton Holdings, L.P. (FSH)-MPGCD Joint Study, Implementation and Threshold Water Levels.**

The Board discussed the ongoing groundwater monitoring of the FSH threshold water levels. All wells are working and operating accordingly. A link to the FSH threshold water levels is available on the District's webpage.

Equipment has been installed in 6 additional monitor wells in Management Zone 1. A total of 23 monitoring locations including Comanche Springs are active and operating appropriately.

**X Briefing and take action as necessary on Cockrell Investment Partners, L.P. v. MPGCD and its Board President in his official capacity, FSH and Republic Water Company of Texas, L.P., Case No. 08-21-00017-CV (El Paso Court of Appeals) and/or Cockrell Investment Partners, L.P. v. MPGCD and its General Manager in his official capacity, and FSH, Case No. 08-21-00200-CV (El Paso Court of Appeals).**

The El Paso Court of Appeals has rendered an opinion affirming the District's decision on Cockrell I. The Court has considered this cause on the record and concludes there was no error in the trial court's judgment.

The El Paso Court of Appeals has rendered an opinion affirming the District's decision on Cockrell II. The Court has considered this cause on the record and concludes there was no error in the trial court's judgment.

Cockrell has filed motions for rehearing in both appeals, and the Court of Appeals requested briefing and responses to both motions, which have been filed. We are waiting for the Court of Appeals to announce its positions in both appeals.

XI Briefing and take action as necessary on **Cockrell Investment Partners, L.P. v. Ty Edwards, In His Capacity as General Manager**, Cause No. P-8580-83-CV in 83<sup>rd</sup> District Court, Pecos County, Texas.

A hearing is set in front of Judge Ables for May 30, 2023 at 9:00 am. The Court Orders the following are set for hearing.

1. General Manger's Plea to the Jurisdiction and FSH's Pleas to the Jurisdiction;
2. Cockrell's Application for Temporary Injunction, unless the Court grants a plea to the jurisdiction or otherwise determines the Application is moot;
3. Status Conference

XIII **Directors' Comments** and consider and/or act upon **agenda for next meeting**.

Next Board meeting will be June 20, 2023 at the District Office.

XIV **Adjourn** Board meeting.

Jeff Sims made a motion to adjourn the meeting. Motion seconded by Alvaro Mandujano, Jr. motion carried unanimously. The meeting adjourned at 12:34 p.m.

  
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M. R. Gonzalez, Secretary/Treasurer

  
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Jerry McGuairt, President

Date Approved 6-20-23