

MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

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405 North Spring Drive Fort Stockton, Texas 79735

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

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 PUBLIC HEARING

February 20, 2024

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 workshop were able to register by emailing mpgcd@mpgcd.org prior to 9:30 a.m. on February 20, 2024.

On this the 20th of February 2024, 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
M.R. Gonzalez	Precinct 2
Puja Boinpally	Precinct 2
Weldon Blackwelder	Precinct 3
Alvaro Mandujano, Jr.	Precinct 4
Ronald Cooper	Precinct 4
Allan Childs	At Large
Jeff Sims	City of Iraan

Quorum Present

Members Absent: Vanessa Cardwell and Larry Drgac

District employees and consultants participating: Ty Edwards, Gail Reeves, Bill Hutchison, Vince Clause, Raymond Straub, Anthony Bodnar, Jim Burton and Mike Gershon.

Others attending: Modesta Williams, Mel Riggs, Jeff Williams, Mark Tisdale, Paula McGuairt, Zach Swick, Buck Benson, Ryan Reed, Kaveh Khorza, Ernest Cockrell, Glenn Honaker, Ed McCarthy, Andrew Samson, Carlos Rubinstein, Andrew Quesada, Mike Thornhill, James Beach, Ron Green, Rebecca Nunu, Tristian Barragan, James

Cravens, Eddie McCarthy, Remie Ramos, Arna McCorkle, Armando Mandujano, and Laura Raun.

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**: No Comments

PUBLIC HEARING ON PETITION TO ADOPT OR MODIFY A DISTRICT RULE

I. CALL THE HEARING; EXPLAIN PROCEDURE

Presiding Officer and Board President Jerry McGuairt called to order the hearing at 10:02 a.m. on the "Petition to Adopt a District Rule" submitted by Cockrell Investment Partners, L.P. Mr. McGuairt announced that he is officiating over today's hearing, along with a quorum of the Board of Directors. The purpose of the hearing is solely to take public comment and to allow argument in support of or in opposition to the Petition. The Petition requests that the District *initiate* rulemaking and hold a hearing on proposed rules, as provided by the Texas Water Code, Sections 36.101 and 36.1025. The hearing is not a hearing on proposed rules. After today's hearing adjourns, the Board will determine whether to grant this Petition and, if so, then move on with a formal rulemaking hearing. What we're doing today is a *new* process, and the first time that our District has received a petition to change our rules. It's a new process set up by the Texas Legislature, under House Bill 2443, that enacted Section 36.1025 of the Texas Water Code and it took effect on September 1, 2023, and required that we enact rules and a form that implements the process by December 1st of last year. We enacted a new Rule 6.5 and a petition form that went into effect on December 1st. Cockrell filed their Petition on Tuesday, December 19th, the day of our December Board meeting. This may be the first petition filed in the state, so we're breaking new ground here today in Pecos County. Our General Manager and legal counsel confirmed that the Petition met the substantive requirements in our Rule 6.5(a) and (b) and Section 36.1025(a) and (b) of the Water Code. 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, the District's Rules, and all other applicable Texas law. A digital recording of this hearing will serve as the official record. Notice has been properly and timely posted at least 20 calendar days prior to the date of this hearing, as well as 72 hours beforehand under the Texas Open Meetings Act.

II. INTRODUCTION TO PUBLIC COMMENT

Mr. McGuairt announced that the next order of business is to take public comment on the Petition. Any person with a real property interest in groundwater located within the District was permitted to provide written comment in advance of today's hearing. We received written comments from Fort Stockton Holdings, and from Cities of Abilene and San Angelo. Third parties were allowed to provide public comment on this Petition

during this hearing. Cockrell's lawyer Mr. Reed requested 45 minutes to make a presentation in support of their Petition. In addition to submitting written comments, Fort Stockton Holdings also requested up to 30 minutes during today's hearing to provide comments on the Petition. Registration forms were also submitted by Ron Green and Armando Mandujano. Order of comments was announced to be Cockrell's representatives, then Fort Stockton Holdings' representatives, then the cities and any other members of the public that filled out a registration form, then the General Manager and our scientists, and then, if Cockrell had time remaining, Cockrell could close since it's their Petition. All comments were required to be focused on the Petition before us. We allowed public comment on our regular agenda already.

III. PUBLIC COMMENT

Mr. McGuairt called Cockrell to begin public comment, and the following representatives from Cockrell presented:

Ryan Reed

Carlos Rubinstein

Andy Sansom

Zach Swick

Ernest Cockrell

Cockrell Investment Partners, LP and Belding Farms' presentation **attached to the minutes as Attachment A.**

Mr. McGuairt next called Fort Stockton Holdings, and Ed McCarthy presented. FSH, City of Abilene and San Angelo written comments **attached to the minutes as Attachment B.**

Mr. McGuairt then allowed comment from other members of the public, which included Ron Green – Written comments attached to the **minutes as Attachment C.**
Armando Mandujano – No comment just listening.

All comments were recorded by digital recording, which will be kept as an official record of the District.

IV. ADJOURN HEARING

All members of the public who wanted to provide public comments were given the opportunity. Alvaro Mandujano, Jr made a motion to adjourn at 12:00 pm and take a recess till 1:30 pm to allow for lunch and executive session during lunch. Motion seconded by Allan Childs.

Motion passed. Vote: 9 FOR -0- Oppose 2 Absent 0 Abstain

An executive session was called from 12:25 pm to 1:15 pm to consult with our attorney pursuant to Section 551.071 of the Texas Government Code on legal

matters noted on agenda including pending lawsuits, pending contested case at RRC, and next steps with legal procedure on pending petition for rulemaking.

At approximately 1:30 pm the Board reconvened from the lunch recess into its regular Board meeting.

II Adjourn hearing and consider and/or act on Petition to Adopt or Modify a District Rule by Cockrell Investment Partners, L.P.

Mr. McGuairt announced that the Board would consider the Petition and take action as required by the statute and our rules. He walked through our options explaining that the statute and our rules require that the District either:

- (1) grant the petition in part, or in its entirety, and initiate rulemaking proceedings on the subject matter identified in the granted petition in accordance with rulemaking procedure set forth in our rules; or
- (2) deny the petition in part, or in its entirety, and provide an explanation for denial in the minutes of the Board meeting or in a separate written statement to be kept in the District's records.

He explained that the Board must take action on the Petition not later than the 90th day after the District received the Petition—having received it December 19th, the 90th day is Monday, March 18th, which is the day before our next scheduled Board meeting. He offered the Board the opportunity to talk about the Petition first or to propose a motion and then have a discussion. He announced that if the motion was to deny, that we'd need a separate written statement prepared to memorialize the reasons for denial, as our rules and the statute require. He requested that the movant identify what comments you're relying on and anything else that supports your motion.

Alvaro Mandujano, Jr made a motion to deny the petition in whole for the reason set out today by Bill Hutchison and MPGCD legal and General Manager with a request that the written statement be prepared to reflect those reasons. Motion seconded by Jeff Sims.

Motion Failed. Vote: 2 FOR -7- Oppose 2 Absent 0 Abstain

Ronald Cooper made a motion to grant the petition in full. After a long discussion this would include all of the proposed Rules A-F. Janet Groth seconded the motion.

Motion Failed. Vote: 5 FOR -4- Oppose 2 Absent 0 Abstain

Since no action was taken the 90-day window for action ends on March 18, 2024. This is one day before our next regular meeting. The Board announced it will move the next Board meeting to March 18, 2024, to have additional Board discussion and opportunity for action, including an opportunity for the other 2 Board members to attend the meeting.

III Consider and/or act to approve **Minutes of Regular Meeting on December 19, 2023.**

The draft Minutes were emailed to the Board prior to the meeting. Ronald Cooper made a motion to approve the Minutes for the meeting of December 19, 2023, as presented. Motion seconded by Allan Childs.

Motion passed. Vote: 9 FOR -0- Oppose 2 Absent 0 Abstain

IV Consider and/or act upon **Treasurer's Report for the Month Ending December 31, 2023.**

General Manager Ty Edwards presented the Treasurer's report to the Board, Allan Childs made a motion to approve the Treasurer's Report ending December 31, 2023, as presented. Motion seconded by Ronald Cooper.

Motion passed. Vote: 9 FOR -0- Oppose 2 Absent 0 Abstain

V Consider and/or act upon **Treasurer's Report for the Month Ending January 31, 2024.**

General Manager Ty Edwards presented the Treasurer's report to the Board. Allan Childs made a motion to approve the Treasurer's Report ending January 31, 2024, as presented. Motion seconded by M.R. Gonzalez.

Motion passed. Vote: 9 FOR -0- Oppose 2 Absent 0 Abstain

VI Consider and/or act upon **Depository Contract and Districts Investment Policy with Pecos County State Bank.**

Pecos County State Bank is contracted for the District deposits for the period of March 1, 2023, through February 28, 2028, but we need to approve the investment policy each year.

Allan Childs makes a motion to set policy and strategy to invest District funds in Demand Deposit accounts, Certificates of Deposit, and other interest-bearing bank accounts at Pecos County State Bank in compliance with the Public Funds Investment Act and Public Funds Collateral Act of chapters 2256 and 2257 of the Texas Government Code for the next 12 months. Weldon Blackwelder seconded the motion.

Motion passed. Vote: 9 FOR -0- Oppose 2 Absent 0 Abstain

VII Consider and/or act upon setting **Mileage Rate for 2024.**

The IRS mileage rate has increased from last year. The new mileage rate is 67 cents per mile. Janet Groth made a motion to approve the mileage rate of 67 cents per mile. Motion seconded by Puja Boinpally.

Motion passed. Vote: 9 FOR -0- Oppose 2 Absent 0 Abstain

VIII Update from **LRE Water on Pecos County Water Levels and Rainfall Report.**

Vince Clause with LRE Water presented the 2023 Pecos County Water Level and Rainfall report to the Board. The report is attached to the minutes as **Attachment D.**

IX Consider and/or act upon **General Manager's 2023 Annual Report.**

The annual report was presented to the board. Alvaro Mandujano, Jr made a motion to accept the 2023 Annual Report with the annual Financial Audit. Motion seconded by Puja Boinpally. The Annual report is available on the District website.

Motion passed. Vote: 9 FOR -0- Oppose 2 Absent 0 Abstain

X Update and Possible action on **Groundwater Model and associated Technical Memoranda**

- The model grid has been updated with the geologic work from LRE Water. The tech memos will be updated.
- Other tech memos using the updated grid will be updated with a general target of completing the work by the end of September.
- All draft tech memos and underlying data are available on the google drive for stakeholder review and comment. The link to the google drive is:

[https://drive.google.com/drive/folders/1nbz4nbnLe5Nbg2-HihvdjAzWDvh-LiCt?usp=drive link](https://drive.google.com/drive/folders/1nbz4nbnLe5Nbg2-HihvdjAzWDvh-LiCt?usp=drive_link)

XI Update and Possible action on **San Andres efforts at RRC and TCEQ.**

A preliminary hearing with the Railroad Commission was held on September 26, 2023, in accordance with Tex. Nat. Res. Code § 89.041 to Determine the Proper Plugging of Twelve Wells, Pecos County, Texas; District 08. A second preliminary hearing was held on February 6, 2023. The examiner has requested briefing on several issues and will make a ruling on jurisdiction some time in March.

The District has met with TCEQ and discussed the new grant program to plug wells in Pecos County. Kelly Keel has been moved from interim to permanent

Executive Director of TCEQ. We've been told by TCEQ that her appointment will help get the ball rolling with a number of their required rulemaking efforts, including their Well Plugging program. The District will continue to work with TCEQ and work through this program to help plug wells in Pecos County.

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

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 at <https://mpgcd.half.com/Dashboard>.

XIII Briefing and take action as necessary on following lawsuits:

A. 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. 23-0742 (Texas Supreme Court)(Cockrell I);

In Cockrell I, Cockrell timely filed its petition by review. The Court requested responses to the Petition for Review, which are due February 27th. Then Court will determine whether to grant, dismiss, refuse, or deny the petition. If granted, the Court is expected to request briefing on the merits.

B. Cockrell Investment Partners, L.P. v. MPGCD and its General Manager in his official capacity, and FSH, Case No. 23-0593 (Texas Supreme Court)(Cockrell II);

In Cockrell II, Cockrell timely filed Petition for Review. The Court requested responses, which are due February 27th. Then Court will determine whether to grant, dismiss, refuse, or deny the petition. If granted, the Court is expected to request briefing on the merits.

C. Cockrell Investment Partners, L.P. v. Ty Edwards, In His Capacity as General Manager, and FSH, Case No. 08-23-00178-CV (El Paso Court of Appeals)(Cockrell III);

In Cockrell III, the District Court ruled in favor of FSH and MPGCD by granting their Pleas to the Jurisdiction. Cockrell appealed and timely filed its appellate briefs, then the District and FSH's appellate briefs were timely filed. On October 13th Cockrell filed a reply brief. Waiting for Court to advise whether there will be oral argument.

D. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, Cause No. P-8626-83-CV (83rd District Court)(Cockrell IV); and

In Cockrell IV, the lawsuit was filed on August 17th and served on September 13th by agreement. The District's answer and counterclaim were timely filed October 9th. FSH has advised that it will intervene and file plea to the jurisdiction.

E. **Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District**, Cause No. P-13031-112-CV (112th District Court)(Cockrell V).

In Cockrell V, the lawsuit was filed on August 23rd and served on September 13th by agreement. The District's answer and counterclaim were timely filed October 9th. FSH has advised that it will intervene and file plea to the jurisdiction.

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

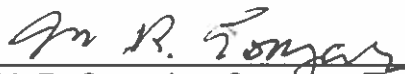
- Crane County Well Blowout Information
- Tx Drought Map 01-23-2024
- 02-17-24 Rig Data Report 0 rigs in Pecos County
- 02-01-2024 Region F Notice of Agenda
- Longfellow Drilling Update
- TWDB DFC Flow Chart
- EcoKi New Installations in Eastern Pecos County and Southern Pecos County
- WGS Annual Transport Fee Report

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

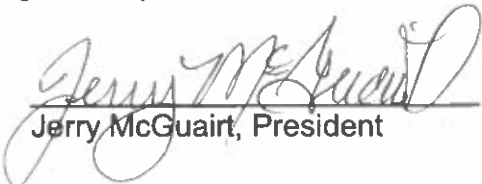
Next Board meeting is set for Monday March 18, 2024.

XVI **Adjourn** Board meeting.

Allan Childs made a motion to adjourn the meeting. Motion seconded by Jeff Sims. Motion carried unanimously. The meeting was adjourned at 3:20 p.m.



M. R. Gonzalez, Secretary/Treasurer



Jerry McGuairt, President

Date Approved 3-18-24