

**MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT**

P.O. Box 1644 Fort Stockton, TX 79735 Phone (432)336-0698 Fax (432)336-3407  
405 North Spring Drive Fort Stockton, Texas 79735  
Email: [mpgcd@mpgcd.org](mailto:mpgcd@mpgcd.org) Website: [www.middlepecosgcd.org](http://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 HEARING TO CONSIDER  
PETITIONS TO ADOPT OR MODIFY DISTRICT RULES**

**October 15, 2024  
405 North Spring Drive, Fort Stockton, Texas**

A quorum of the District’s Board of Directors held its regular Board meeting and hearing on petitions to change rules 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 October 15, 2024.

On this the 15<sup>th</sup> of October 2024, a Regular Board Meeting and hearing was 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
Weldon Blackwelder	Precinct 3 Participated by zoom
Ronnie Cooper	Precinct 4
Alvaro Mandujano Jr	Precinct 4
Allan Childs	At Large left at 11:15 didn’t vote on any items
M.R. Gonzalez	Precinct 2 Participated by zoom
Vanessa Cardwell	City of Fort Stockton

Quorum Present

Members Absent: Larry Drgac and Jeff Sims

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

Others attending: John Manning, Paula McGuairt, Carlos Rubinstein, Ryan Reed, Zach Swick, Jeff Williams, Steven Bote, Carlos Noguerras, Carl Craigo, Daniel Lupton, Ed McCarthy, Eddie McCarthy, Glenn Honaker, Jeremiah Bihl, Laura Raun, Mel Riggs, Mike Thornhill, Steven Sims, Jason Hill, James Beach, Buck Benson, and Mark Tisdale.

## REGULAR BOARD MEETING

- I Board Meeting called to order at 10:03 a.m. by President Jerry McGuairt and roll call was taken.
- II Comments from **public and media**: No Comments

## PUBLIC HEARING ON PETITIONS TO ADOPT OR MODIFY DISTRICT RULES

### I. CALL THE HEARING; EXPLAIN PROCEDURE

This consolidated hearing was called to order on Tuesday, October 15, 2024, at 10:05 A.M., on two petitions for rulemaking submitted by Cockrell Investment Partners, L.P. and its affiliate Belding Farms. Mr. McGuairt announced he will be officiating over today's hearing, along with a quorum of the Board of Directors who will also officiate and participate in any ruling on the Petitions. The purpose of today's hearing is solely to take public comment and to allow argument in support of or in opposition to the Petitions. The Petitions request 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. Today's hearing is not a hearing on proposed rules. After today's hearing adjourns, our Board of Directors will determine whether to grant either or both of these Petitions and, if so, then move on with a formal rulemaking hearing at a later date. What the District is doing today is a new process, and the second time that our District has received a petition to change our rules – and among the few only petitions that have ever been filed around the state. 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...It took effect on September 1, 2023, and required that we enact rules and a form that implements the process by December 1<sup>st</sup> of last year. Our Board did just that by enacting a new Rule 6.5 and a petition form that went into effect on December 1<sup>st</sup>. Cockrell filed the two Petitions before us today on Tuesday, August 19<sup>th</sup>, at 7:35 a.m., the day of our August Board meeting. This 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 serves as the official record. Our legal counsel Mike Gershon is here to assist with procedural and legal issues that may need to be addressed. 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 comments on the Petitions. 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 Midland, 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. 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 Petitions. All comments were required to be focused on the Petitions 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  
Zach Swick

Cockrell's petitions for rulemaking are attached to the minutes:

**Attachment A – “Mitigation Fund”**  
**Attachment B – “Unreasonable Impacts”**

Mr. McGuairt next called Fort Stockton Holdings, and

Ed McCarthy presented written comments **attached to the minutes as Attachment C and Attachment D.**

Mr. McGuairt next called City of Abilene and San Angelo:

Jason Hill presented written comments **attached to the minutes as Attachment E.**

Mr. McGuairt then allowed City of Midland to present, and

Carl Craigo presented written comments **attached to the minutes as Attachment F.**

Ty Edwards, Mike Gershon and Bill Hutchison presented an analysis of Cockrell's proposed rule petitions **attached to the minutes as Attachment G.**

Ty Edwards and Bill Hutchison went over the historical data and historical pumping of the area.

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. Ronald Cooper made a motion to adjourn at 11:26 am. Motion seconded by Vanessa Cardwell.

Motion passed. Vote: 8 FOR -0- Oppose 3 Absent 0 Abstain

#### II Adjourn hearing and consider and/or act on **Petitions to Adopt or Modify a District Rules by Cockrell Investment Partners, L.P.**

Mr. McGuairt announced that the Board would consider the Petitions 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 one or more of the petitions in part, or in their 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 one or more of the petitions in part, or in their 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.

The Board must take action on the Petitions not later than the 90<sup>th</sup> day after the District received the Petitions—having received it August 19<sup>th</sup>, the 90<sup>th</sup> day is Sunday, November 17<sup>th</sup>, which is the day before our next scheduled Board meeting. Mr. McGuairt offered the Board the opportunity to talk about the Petitions first or to propose a motion and then have a discussion. Mr. McGuairt announced that if the motion was to deny then the Board needs a separate written statement prepared to memorialize the reasons for denial, as our rules and the statute require. Mr. McGuairt requested that the movant identify what comments they're relying on and anything else that supports the motion.

Janet Groth made a motion to deny the first petition for rulemaking to mandate a "Mitigation Fund" and Guidelines in whole for the reasons set out today by Dr. Bill Hutchison and MPGCD legal counsel and General Manager with a request that the written statement be prepared to reflect those reasons. Motion seconded by Alvaro Mandujano, Jr.

Motion passed. Vote: 8 FOR -0- Oppose 3 Absent 0 Abstain

Alvaro Mandujano, Jr made a motion to deny the second petition for rulemaking to define "Unreasonable Impacts" in whole for the reason set out today by Dr. Bill Hutchison and MPGCD legal counsel and General Manager with a request that the written statement be prepared to reflect those reasons. Motion seconded by Vanessa Cardwell.

Motion passed. Vote: 8 FOR -0- Oppose 3 Absent 0 Abstain

III Consider and/or act to approve **Minutes of Regular Meeting on September 17, 2024.**

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 September 17, 2024, as presented. Motion seconded by Puja Boinpally.

Motion passed. Vote: 8 FOR -0- Oppose 3 Absent 0 Abstain

IV Consider and/or act upon **Treasurer's Report for the Month Ending September 30, 2024**

General Manager Ty Edwards presented the Treasurer's report to the Board. Puja Boinpally made a motion to approve the Treasurer's report ending September 30, 2024, as presented. Motion seconded by Alvaro Mandujano, Jr.

Motion passed. Vote: 8 FOR -0- Oppose 3 Absent 0 Abstain

V Consider and/or act to approve **accounting of annual and sick leave** for District employees.

Annual Leave and Sick time as of September 30, 2024

Gail Reeves

116 hr Vacation

389 hr sick

Ty Edwards

81 hr Vacation

432 hr sick

Ant Bodnar

24 hr Vacation

340 hr sick

VI Update and possible action on **Pecos County Groundwater Flow Model** and Timeline on Tech Memos.

Dr. Bill Hutchison gave an update on the progress of the model.

A new draft tech memo has been created for the model grid. That tech memo and all the tech memos are on the District's webpage with peer review and feedback encouraged. Belding Farms Data processed 5600 data points from 1957 to 2023. TWDB had over 47,000 water levels from 1940 to 2024. Eco Kia transducer data from FSH joint study had over 500,000 data points for 2021-2024. LRE and the Halff data management system had 15,000 groundwater data points. While

calibrating the database we realized all the data from numerous studies have not been added to the database. Several discrepancies were recognized on some of the Belding Farms' wells for elevations compared to the model grid. Belding Farms corrected the coordinates on the suspected wells and LRE updated the database.

We are working on finalizing the pumping data and Spring locations and beginning to look at the recharge analysis that will need to be completed. All tech memos associated with the model can be assessed at the following google link:

[https://drive.google.com/drive/folders/1HYj8JRV4omAgKPJWBta-T20hZUbtyaPS?usp=drive\\_link](https://drive.google.com/drive/folders/1HYj8JRV4omAgKPJWBta-T20hZUbtyaPS?usp=drive_link)

- VII Update and possible action on **San Andres efforts at RRC and TCEQ, and MPGCD v. RRC and Commissioners**, Cause No. D-1-GN-24-005222 (200<sup>th</sup> District Court, Travis County) and second cause filed on October 11, 2024.

The Board was briefed on the regulatory hearings activity from last fall through this summer at the Railroad Commission, and ultimately the Commissioners' final action on our request that wells be added to RRC's plugging list and prioritized for plugging. The RRC denied all our requests, which is not a surprise. This procedure was required to exhaust administrative remedies before seeking a judicial opinion about RRC's jurisdiction and duty to plug. The next step was for the District to file an original petition for judicial review, declaratory relief, and mandamus relief in the Travis County District Court, which was accomplished on August 16, 2024. Because RRC undertook additional procedural steps, we were conservative to ensure that we exhausted administrative remedies and then filed a second original petition on October 11, 2024. The Railroad Commission has filed its Original Answer denying all allegations in the first lawsuit.

The District has met with TCEQ's senior management and program staff and discussed the new grant program to plug wells in Pecos County. Awaiting TCEQ rulemaking that will begin in late 2024.

- VIII Update on **Fort Stockton Holdings, L.P. (FSH)-MPGCD Joint Study, Threshold Water Level Update and Drilling of New Rustler Monitor on Williams Farms**.

The Board and General Manager 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>. General Manager Ty Edwards screen-shared and provided an overview of current data.

Began work on a Rustler Monitor Well Recommendations and beginning scope of work on drilling of well and bid specs for same. Met on site with Jeff Williams and Raymond Straub to decide on a preliminary drilling location and source water.

IX 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 will determine whether to grant, dismiss, refuse, or deny the petition. At least one Justice requested responses to the petition for review, and subsequently, at least three Justices asked for briefing on the merits before deciding how to rule on the petition. To be clear, the Court has not yet decided whether to accept the appeal and issue a decision. Cockrell filed its brief on September 13<sup>th</sup> and the District's and FSH's deadline to respond is in November.

- 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, the Court has taken the same procedural position as in Cockrell I, and all the parties have the same briefing deadlines as in Cockrell I. Cockrell filed its brief on September 13<sup>th</sup> and the District's and FSH's deadline to respond is in November.

- 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 13<sup>th</sup> Cockrell filed a reply brief. On May 14<sup>th</sup> the Court set for submission without oral argument for June 4, 2024. Waiting for a decision from the Court.

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

In Cockrell IV, the lawsuit was filed on August 17<sup>th</sup> and served on September 13<sup>th</sup> by agreement. The District's answer and counterclaim were timely filed October 9<sup>th</sup>. FSH has advised that it will intervene and file plea to the jurisdiction. Cockrell filed Plaintiff's First Amended Petition on August 5, 2024.

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

In Cockrell V, the lawsuit was filed on August 23<sup>rd</sup> and served on September 13<sup>th</sup> by agreement. The District's answer and counterclaim were timely filed October 9<sup>th</sup>. FSH has advised that it will intervene and file plea to the jurisdiction. Cockrell filed Plaintiff's First Amended Petition on August 5, 2024

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

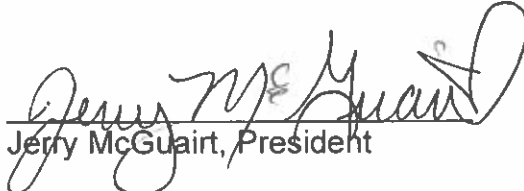
- Rig Data Report ending 10-12-2024 three rigs in Pecos County
- Texas Drought Map for Pecos County 10-08-2024. Western Pecos County is in Severe Drought decreasing as you go east with no Drought in the far eastern part of Pecos County
- Daily Forecast ends for Weather modification
- Longfellow Ranch permits

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

Next Board meeting is November 19, 2024. The Board requested we hold a hearing on export fees as contemplated in § 36.122(e-3) and consider approving reason for rule petitions denial.

XII **Adjourn** Board meeting.

  
M. R. Gonzalez, Secretary/Treasurer

  
Jerry McGuairt, President

Date Approved 11/20/2024

## MIDDLE PECOS

### Groundwater Conservation District

P. O. Box 1644, Fort Stockton, Texas 79735

Phone: 432/336-0698; Fax: 432/336-3407

Email: [mpgcd@mpgcd.org](mailto:mpgcd@mpgcd.org)

## PETITION TO ADOPT OR MODIFY A DISTRICT RULE

**Instructions:** This Petition to Adopt or Modify a District Rule form must be completed as required by District Rule 6.5 and filed at the District office. Each rule adoption or modification requested must be submitted on a separate Petition to Adopt or Modify a District Rule form.

A person unable to comply with any procedures under District Rule 6.5, or to provide the information required by this form, may file a written explanation as to why compliance with the required procedure(s) is not possible along with a written request that the District waive the specific procedure(s). The written explanation and written request must be submitted to the District Office at the same time as this Form.

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*Additional information may be attached to this form.*

- 1. Text of Proposed Rule or Rule Modification** (underline words proposed to be added to the text of the current rules and strike through words proposed to be deleted from the text of the current rules):

Restated Rule 16.1:

The District shall charge an export fee or surcharge of twenty (20) cents per thousand gallons of water exported by a permit holder, which shall automatically increase at a rate of three (3) percentage per year to the maximum extent allowed by Texas law.

Proposed New Rule entitled "Mitigation Fund":

The District shall, upon collection of the export fee or surcharge, establish a mitigation fund, which shall be maintained and utilized for the purposes of (1) making grants, loans, or contractual payments to achieve, facilitate, and expedite reductions in groundwater pumping, (2) developing or distributing alternative water supplies, and (3) maintaining the operability of wells significantly affected by groundwater development. The District shall, upon application, provide permittees who demonstrate that they have been significantly affected by the production and export of water with the resources necessary to operate their wells and recoup the adverse economic impacts caused by the decline of groundwater levels.

- 2. Written Explanation of the Intended Purpose of the Proposed Rule or Rule Modification:**

The Texas Legislature recognizes that large scale production for export of groundwater has, in fact, resulted in negative socioeconomic impacts to local users, a concern evidenced by the passage of HB 3059 during the 88th legislative sessions. To ensure that the District is protecting groundwater for all permit holders, Cockrell requests that the District adopt the Proposed Rule to create a fund that is available for permit holders adversely affected by the production and export of groundwater. The Proposed Rule, which tracks HB3059, requires the District to create a fund from resources already available to it, maximize that fund, and allow groundwater permit holders negatively affected by increased pumping of the aquifer to receive compensation for the economic costs that will arise from a decline in the aquifer levels.

**3. Allegation of Injury or Inequity that could Result from Failure to Adopt Proposed Rule**

**or to Modify Current Rule:**

The District's Management Plan does not provide for a year-round floor or thresholds with production cutbacks or any other real consequences for damages that may occur as a result of declining aquifer levels. Without significant rulemaking changes in cutback threshold levels, the following issues are likely to occur: declining water levels, decreased transmissibility, decreased levels of production, increased levels of solids in the water, higher production costs, and potential need to lower pumps, install larger pumps, drill deeper wells, and even re-drill some wells. Lack of proper enforcement of pumping cutbacks based on water level triggers increases the risk of long-term damage to the aquifer and its ability to adequately recover after the summer irrigation season. Increased strain on the aquifer could also damage other nearby aquifers. Individual permittees, such as Belding Farms, may experience a loss or degradation of water at or below historic levels. The cost to drill deeper and retrofit wells, as well as the economic impacts of loss of crop because of a decrease in water production or water quality, should not be borne by a permit holder who has made investment decision based on historic use of groundwater. A mitigation fund will allow the District to impose a surcharge on the commercial sale and export of water and establish a fund to assist permittees affected by the increased production.

**4. Description of Petitioner(s) Real Property Interest in Groundwater in the District (attach**

**proof of real property interest in groundwater located within the District for each petitioner):**

Cockrell is a landowner within the District. Cockrell/Belding Farms owns a 2,205 acre commercial pecan orchard consisting of approximately 77,000 trees. For its orchard, Cockrell utilizes its substantial water rights in the Edwards-Trinity Aquifer, which supports its pecan orchard.

Cockrell currently has a Historic Existing Use Permit that was issued in July 2006 for 16 wells in the amount of 15,528.846 acre feet, which is used to, among other things, supply water/irrigation requirements for its pecan orchard consisting of approximately 77,000 trees. In fact, Cockrell's 2,205-acre orchard is a part of 6,663.18 acres owned and leased by Cockrell.

**Petitioner(s) Information** (Please include information for additional petitioners as appropriate).

**Petitioner #1:**

Cockrell Investment Partners, LP and Belding Farms, c/o Ryan C. Reed, Attorney  
(210) 222-9494; rreed@pulmanlaw.com

First Name	Last Name	Phone Number	Email Address	
<u>Pulman, Cappuccio &amp; Pullen, LLP, 2161 NW Military Hwy, Suite 400, San Antonio, TX 78213</u>				
Physical Address		City	State	Zip code

Pulman, Cappuccio & Pullen, LLP, 2161 NW Military Hwy, Suite 400, San Antonio, TX 78213  
Mailing Address

/s/ Ryan C. Reed 08/19/2024

*Signature* *Date*

**Petitioner #2:**

First Name	Last Name	Phone Number	Email Address	
<u>Physical Address</u>				
Physical Address		City	State	Zip code

<u>Mailing Address</u>		City	State	Zip code
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*Signature* *Date*

**Petitioner #3:**

First Name	Last Name	Phone Number	Email Address	
<u>Physical Address</u>				
Physical Address		City	State	Zip code

<u>Mailing Address</u>		City	State	Zip code
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*Signature* *Date*

*Additional information may be attached to this form.*

**MIDDLE PECOS**  
**Groundwater Conservation District**  
P. O. Box 1644, Fort Stockton, Texas 79735  
Phone: 432/336-0698; Fax: 432/336-3407  
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A person unable to comply with any procedures under District Rule 6.5, or to provide the information required by this form, may file a written explanation as to why compliance with the required procedure(s) is not possible along with a written request that the District waive the specific procedure(s). The written explanation and written request must be submitted to the District Office at the same time as this Form.

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- 1. Text of Proposed Rule or Rule Modification** (underline words proposed to be added to the text of the current rules and strike through words proposed to be deleted from the text of the current rules):

Proposed New Rule entitled "Unreasonable Impacts":

Unreasonable Impacts: In order to help achieve a balance between production and conservation of groundwater resources, and to ensure that the District is able to achieve the Desired Future Condition, the District will consider the impacts to the Edwards Trinity Aquifer to be unreasonable if the average water level of all Monitoring Wells in Management Zone 1 on September 1 of any year is more than seven (7) feet less than the average water level of all Monitoring Wells in Management Zone 1 on September 1, 2018.

Action. If the foregoing measurements indicate unreasonable impacts, the District shall:

1. Sends written notice to all permit holders and publish notice on Website
2. Require permit holders to monitor and report water levels monthly
3. Require permit holders to report lowering of pumps and new pump depth
4. Suspend consideration of new transport/export permits
5. Schedule board meeting within 10 days to discuss exercise of District's emergency powers, including curtailment of production by permit holders up to 50 percent.

**2. Written Explanation of the Intended Purpose of the Proposed Rule or Rule Modification:**

To ensure that the District is protecting groundwater for all permit holders and achieving the DFC, Cockrell requests that the District adopt the Proposed Rule to establish measures that will be implemented when pumping in the District causes unreasonable impacts on permittees. Under section 36.113(d) of the Water Code, the District is required to consider whether use of water unreasonably affects existing resources and permittees when it considers permits. The Proposed Rule requires the District to define unreasonable impacts and implement protections for the benefit of all permittees when pumping of the aquifer creates unreasonable impacts. The seven (7) foot draw-down represents a proactive measurement of the actual impact of production on the aquifer, and is fifty percent (50%) of the planned draw-down over the next 25 years. Fifty percent (50%) of the planned draw-down is an objective measurement intended to identify needed action to ensure that the established DFC will be complied with and remains a viable target by 2050.

**3. Allegation of Injury or Inequity that could Result from Failure to Adopt Proposed Rule  
or to Modify Current Rule:**

The District does not define unreasonable impacts or address how it intends to achieve the DFC. Without significant rulemaking changes and in light of additional pumping from exports, unreasonable impacts resulting from increased production, including long-term damage to the aquifer and its ability to adequately recover after the summer irrigation season, may occur. All permittees, including Belding Farms, will experience a loss or degradation of water if the District does not protect against unreasonable impacts. The best way to prevent unreasonable impacts is to ensure that the District is on track to comply with the DFC. If the DFC is exceeded, permittees will be met with costs to drill deeper and retrofit wells, as well as the economic impacts of loss of water or degradation of water quality.

**4. Description of Petitioner(s) Real Property Interest in Groundwater in the District (attach proof of real property interest in groundwater located within the District for each petitioner):**

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LAW OFFICES OF  
**McCARTHY & McCARTHY, L.L.P.**

1122 COLORADO STREET, SUITE 2399  
AUSTIN, TEXAS 78701  
(512) 904-2310  
(512) 692-2826 (FAX)

October 14, 2024

Middle Pecos Groundwater Conservation District  
Attn: Board of Director  
c/o Ty Edwards, General Manager  
P.O. Box 1644  
Fort Stockton, Texas 79735

*Via E-mail*

Re: Cockrell Investment Partners LP's August 19, 2024 Petition for Rulemaking to define "Unreasonable Impacts"

Dear Directors:

On behalf of Fort Stockton Holdings, LP ("FSH") and Williams Farms LP ("Williams"), I am writing to request the Board deny the Petition for Rulemaking filed on August 19, 2024, by Cockrell Investment Partners LP ("Cockrell") to create a new rule entitled "Unreasonable Impact" (the "Petition"). A copy of the Petition is appended hereto as "Attachment No. 1" for reference purposes. For the reasons set forth below, and with the support of the Technical Memorandum appended hereto as "Attachment No. 2," cooperatively prepared by the Thornhill Group, Inc. and Advanced Groundwater Solutions, Inc., detailing the hydrogeologic basis for concluding that Cockrell's Petition fails to provide scientific support for the proposed rule, FSH and Williams respectively request the Board deny the Petition.

The crux of the proposed rule is to establish a drawdown elevation in the Edwards Trinity Aquifer within the District's Management Zone 1 ("MZ1") located in the Leon Belding Area of Pecos County west of Fort Stockton that could result in mandatory curtailment of groundwater production by Permittees despite the lack of existence of a true threat to the Aquifer. The proposed rule contains an arbitrarily selected change in the average elevation in the Aquifer on September 1<sup>st</sup> of each year to effectuate that Draconian result.

As the Board will recall, Cockrell previously petitioned the District to adopt a rule with similar intent to impose arbitrary constraints on groundwater production in MZ1. Not only was Cockrell's previously proposed rule scientifically unsupported, it was prematurely presented in light of the District's ongoing studies and model update for MZ1 monitoring. FSH believes it is still premature to take any action to modify the District's existing rules related to groundwater production from the Edwards-Trinity in the Leon Belding Area designated as Management Zone 1 ("MZ1").

With respect to the specific rule proposed by Cockrell to create an artificial definition of "Unreasonable Impacts" based upon arbitrarily selected criteria, FSH engaged two of Texas' pre-

eminent hydrogeologic firms to review the existing scientific data to demonstrate the arbitrary character of the proposed cut-off threshold of “seven (7) feet less than the average water level of all Monitoring Wells in Management Zone 1 on September 1, 2018.” The joint Thornhill/AGS Memorandum is appended hereto as Attachment No. 2.

In summary the Thornhill/AGS Memorandum presents documented data which supports the following conclusions:

- (i) The District has a robust monitoring well system in MZ1 which generates data on a daily basis documenting the Aquifer’s condition;
- (ii) The District’s current thresholds and triggers are based upon measured water levels obtained from multiple sources, including Cockrell, *e.g.*, Texas Water Development Board, FSH and the District’s own wells, which contradict Cockrell’s assertions in support of its Draconian recommendations;
- (iii) Cockrell presents no scientifically supportable justification for its arbitrary selection of either “7 foot” reduction or the September 1, 2018, baseline date for its threshold trigger;
- (iv) The groundwater production aquifer elevation data Cockrell has provided to MPGCD clearly negates any basis to support the proposed rule as history documents that lower elevations than 7 feet below the September 1, 2018, proposed threshold (a) have occurred, (b) no harm has occurred, and (c) the Aquifer always recovered; and
- (v) The proposed rule does not (a) recognize, much less counter the historically observed water elevations documented by the data, nor (b) allow for reasonable pumping from MZ1.

See Attachment No. 2.

At the District’s December 19, 2023, Board Meeting in response to the prior rule proposed by Cockrell, the District’s hydrogeologist, Dr. William (“Bill”) Hutchison, Ph.D., P.E., P.G., gave a presentation on the ongoing scientific analysis and associated modeling work he, and his team at LRE Water, have been commissioned by the District to perform related to MZ1 and the District’s rules related to MZ1 (the “Study”). Dr. Hutchison noted that the Study and plan for the updated model continues to progress. Dr. Hutchison indicated that upon completion of the Study, he would present his findings and recommendations to the Board with respect to what, if any, modifications to the District’s MZ1 rules, including drawdown criteria would benefit the Edwards-Trinity Aquifer and its users within MZ1.

Unwilling to await completion of Dr. Hutchison’s work, and in an effort to distract MPGCD, Cockrell continues to file rulemaking Petitions based upon scientifically unfounded fears based purely on fear-mongering and speculation, promoting drastic changes to the current District rules, including the imposition of arbitrary aquifer level thresholds which, if triggered, would require massive curtailments to permitted users in MZ1. Cockrell seeks these draconian changes despite the fact that, since the District’s creation, there has never been a showing of any adverse

October 14, 2024

Page 3

impacts to the Aquifer due to pumping within MZ1. This is true even during severe droughts similar to the one currently being experienced. There have not been any complaints or issues with wells going dry under the District's current rules in place to regulate production in MZ1. Additionally, with regard to the FSH permit, there are already District negotiated threshold levels with attached curtailments in effect.

The District's current rules and management methods for MZ1 have been very successful. Cockrell's Petition presents no documented scientific reason to change either. As the District continues to improve its data, and its hydrogeologic consultants' work to improve the District's predictive model, any change to the MZ1 rules at this time is both unnecessary and premature.

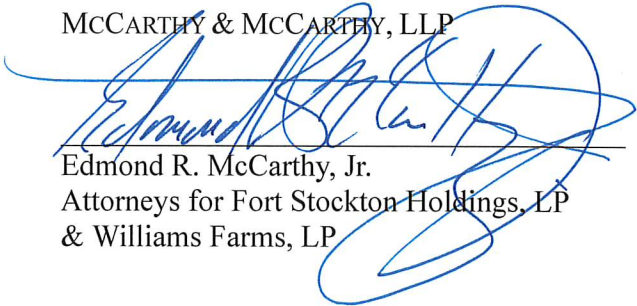
Cockrell has presented no scientifically credible basis for the requested rule change. The Petition is just another example of the ongoing efforts of Cockrell to disrupt a single permittee's property rights. The District should deny Cockrell's Petition, and allow Dr. Hutchison to complete his scientific endeavor to update the District's model and report to the District Board.

Thank you for your favorable consideration of this request. Should you have any questions, please feel free to call me. By copy of this letter I am copying both the District's General Counsel, Michael Gershon, and Counsel for the Petitioner, Ryan Reed.

Best wishes.

Sincerely,

MCCARTHY & MCCARTHY, LLP



Edmond R. McCarthy, Jr.  
Attorneys for Fort Stockton Holdings, LP  
& Williams Farms, LP

ERM/tn

Encl.

cc (via e-mail):

Cockrell Investment Partners, LP  
Attn: Ryan Reed, Counsel  
Michael Gershon, General Counsel, MPGCD  
Fort Stockton Holdings, LP

## **Attachment No. 1**

Petition for Rulemaking filed on August 19, 2024,  
by Cockrell Investment Partners LP

**MIDDLE PECOS**  
**Groundwater Conservation District**  
P. O. Box 1644, Fort Stockton, Texas 79735  
Phone: 432/336-0698; Fax: 432/336-3407  
Email: [mpgcd@mpgcd.org](mailto:mpgcd@mpgcd.org)

**PETITION TO ADOPT OR  
MODIFY A DISTRICT RULE**

**Instructions:** This Petition to Adopt or Modify a District Rule form must be completed as required by District Rule 6.5 and filed at the District office. Each rule adoption or modification requested must be submitted on a separate Petition to Adopt or Modify a District Rule form.

A person unable to comply with any procedures under District Rule 6.5, or to provide the information required by this form, may file a written explanation as to why compliance with the required procedure(s) is not possible along with a written request that the District waive the specific procedure(s). The written explanation and written request must be submitted to the District Office at the same time as this Form.

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*Additional information may be attached to this form.*

- 1. Text of Proposed Rule or Rule Modification** (underline words proposed to be added to the text of the current rules and strike through words proposed to be deleted from the text of the current rules):

Proposed New Rule entitled "Unreasonable Impacts":

Unreasonable Impacts: In order to help achieve a balance between production and conservation of groundwater resources, and to ensure that the District is able to achieve the Desired Future Condition, the District will consider the impacts to the Edwards Trinity Aquifer to be unreasonable if the average water level of all Monitoring Wells in Management Zone 1 on September 1 of any year is more than seven (7) feet less than the average water level of all Monitoring Wells in Management Zone 1 on September 1, 2018.

Action. If the foregoing measurements indicate unreasonable impacts, the District shall:

1. Sends written notice to all permit holders and publish notice on Website
2. Require permit holders to monitor and report water levels monthly
3. Require permit holders to report lowering of pumps and new pump depth
4. Suspend consideration of new transport/export permits
5. Schedule board meeting within 10 days to discuss exercise of District's emergency powers, including curtailment of production by permit holders up to 50 percent.

**2. Written Explanation of the Intended Purpose of the Proposed Rule or Rule Modification:**

To ensure that the District is protecting groundwater for all permit holders and achieving the DFC, Cockrell requests that the District adopt the Proposed Rule to establish measures that will be implemented when pumping in the District causes unreasonable impacts on permittees. Under section 36.113(d) of the Water Code, the District is required to consider whether use of water unreasonably affects existing resources and permittees when it considers permits. The Proposed Rule requires the District to define unreasonable impacts and implement protections for the benefit of all permittees when pumping of the aquifer creates unreasonable impacts. The seven (7) foot draw-down represents a proactive measurement of the actual impact of production on the aquifer, and is fifty percent (50%) of the planned draw-down over the next 25 years. Fifty percent (50%) of the planned draw-down is an objective measurement intended to identify needed action to ensure that the established DFC will be complied with and remains a viable target by 2050.

**3. Allegation of Injury or Inequity that could Result from Failure to Adopt Proposed Rule  
or to Modify Current Rule:**

The District does not define unreasonable impacts or address how it intends to achieve the DFC. Without significant rulemaking changes and in light of additional pumping from exports, unreasonable impacts resulting from increased production, including long-term damage to the aquifer and its ability to adequately recover after the summer irrigation season, may occur. All permittees, including Belding Farms, will experience a loss or degradation of water if the District does not protect against unreasonable impacts. The best way to prevent unreasonable impacts is to ensure that the District is on track to comply with the DFC. If the DFC is exceeded, permittees will be met with costs to drill deeper and retrofit wells, as well as the economic impacts of loss of water or degradation of water quality.

**4. Description of Petitioner(s) Real Property Interest in Groundwater in the District (attach proof of real property interest in groundwater located within the District for each petitioner):**

Cockrell is a landowner within the District. Cockrell/Belding Farms owns a 2,205 acre commercial pecan orchard consisting of approximately 77,000 trees. For its orchard, Cockrell utilizes its substantial water rights in the Edwards-Trinity Aquifer, which supports its pecan orchard.

Cockrell currently has a Historic Existing Use Permit that was issued in July 2006 for 16 wells in the amount of 15,528.846 acre feet, which is used to, among other things, supply water/irrigation requirements for its pecan orchard consisting of approximately 77,000 trees. In fact, Cockrell's 2,205-acre orchard is a part of 6,663.18 acres owned and leased by Cockrell.

**Petitioner(s) Information** (Please include information for additional petitioners as appropriate).

**Petitioner #1:**

Cockrell Investment Partners, LP and Belding Farms, c/o Ryan C. Reed, Attorney  
(210) 222-9494; rreed@pulmanlaw.com

First Name	Last Name	Phone Number	Email Address	
<u>Pulman, Cappuccio &amp; Pullen, LLP, 2161 NW Military Hwy, Suite 400, San Antonio, TX 78213</u>				
Physical Address		City	State	Zip code

Pulman, Cappuccio & Pullen, LLP, 2161 NW Military Hwy, Suite 400, San Antonio, TX 78213  
Mailing Address

/s/ Ryan C. Reed 08/19/2024

*Signature* *Date*

**Petitioner #2:**

First Name	Last Name	Phone Number	Email Address	
<u>Physical Address</u>				
Physical Address		City	State	Zip code

<u>Mailing Address</u>		City	State	Zip code
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*Signature* *Date*

**Petitioner #3:**

First Name	Last Name	Phone Number	Email Address	
<u>Physical Address</u>				
Physical Address		City	State	Zip code

<u>Mailing Address</u>		City	State	Zip code
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*Signature* *Date*

*Additional information may be attached to this form.*

## **Attachment No. 2**

Technical Memorandum re: Cockrell's August 19, 2024,  
Rule Changes (AGS & TGI, October 10, 2024)

## TECHNICAL MEMORANDUM

TO: Mr. Ed McCarthy, McCarthy & McCarthy, LLP  
FROM: Michael R. Thornhill, P.G., Thornhill Group, Inc.  
James A. Beach, P.G., Advanced Groundwater Solutions  
DATE: October 12, 2024  
CC: Mr. Eddie McCarthy, McCarthy & McCarthy, LLP  
SUBJECT: Technical Responses to Proposed Changes to the Rules of the  
Middle Pecos Groundwater Conservation District as Submitted on  
August 19, 2024 by Cockrell Investments, LP and Belding Farms

### Introduction

Thornhill Group, Inc. (TGI) and Advanced Groundwater Solutions (AGS) provide technical responses herein pertaining to the changes in the Middle Pecos Groundwater Conservation District (MPGCD or District) Rules (as effective on December 1, 2023), proposed by Cockrell Investments, LP and Belding Farms (Cockrell) to the MPGCD on August 19, 2024. The MPGCD staff and attorney provided a general briefing on the proposed rules as Item IX A. and Item IX B. during the regular District board meeting of September 17, 2024. We focus our comments on the proposed rule change regarding “unreasonable impact.”

### Proposed New Rule Entitled “Unreasonable Impacts”

Per agenda Item IX B. the proposed rule changes included:

Proposed New Rule entitled "Unreasonable Impacts": Unreasonable Impacts: In order to help achieve a balance between production and conservation of groundwater resources, and to ensure that the District is able to achieve the Desired Future Condition, the District will consider the impacts to the Edwards Trinity Aquifer to be unreasonable if the average water level of all Monitoring Wells in Management Zone 1 on September 1 of any year is more than seven (7) feet less than the average water level of all Monitoring Wells in Management Zone 1 on September 1, 2018.

AGS and TGI provide the responses within this Technical Memorandum on behalf of Fort Stockton Holdings (FSH). AGS and TGI address the hydrogeological or technical issues associated with the proposed rule changes based on 18 years of specific and comprehensive study of the groundwater conditions beneath Williams Farms, within

Management Zone 1 (MZ1) of the MPGCD, and in western Pecos County. Since 2006, AGS and TGI have conducted comprehensive monitoring of water levels in numerous FSH Wells, and have sampled FSH Wells for laboratory analysis of water quality. TGI has (since 2006) assisted FSH in monitoring and accurately estimating its annual pumping on a well-by-well basis. AGS and TGI have also collaborated in creating a comprehensive groundwater flow model for western Pecos County, and MPGCD adopted the resulting model as the most suitable for modeling MZ1 and the basis for an updated model (in progress). Additionally, AGS and TGI worked with MPGCD geoscientists and staff in establishing water-level thresholds based on historical data by which MZ1 can be managed to ensure that aquifer conditions remain more favorable than in historical periods during which pumping was substantially greater than current groundwater production. Finally, AGS and TGI continue to provide expert hydrogeological services for FSH in the collaborative joint-study conducted with MPGCD.

## Technical Responses to Proposed Rule Changes

AGS and TGI have limited comments in this Technical Memorandum to scientific or hydrogeological matters.

### Proposed “Unreasonable Impacts” Rule

Cockrell’s petition states, “The best way to prevent unreasonable impacts is to ensure that the District is on track to comply with the DFC.” Specifically “...the.District.will.consider.the.impacts.to.the.Edwards.Trinity.Aquifer.to.be.unreasonable.if.the.average.water.level.of.all.Monitoring.Wells.in.Management.Zone.7.on.September.7.of.any.year.is.more.than.seven.(7).feet.less.than.the.average.water.level.of.all.Monitoring.Wells.in.Management.Zone.7.on.September.7.8674”. To our knowledge, no scientific basis for the Cockrell petition has been provided. Therefore, we assembled historic monitoring data to assess the proposed rule. Table 1, attached hereto as Appendix “A,” provides historic water-level measurements for the 11 MPGCD Monitoring Wells in MZ1 from 2008 through 2023. Table 1 summarizes the water level elevation at each of the MPGCD Monitor Wells for September 1 and during the winter for each year. In the early years, data was not always available for each year. These data are the basis for our discussion below.

- The proposed rule would conflict with District Rule 10.5 - Rule 10.5 provides the acceptable drawdown in MZ1. Cockrell indicates that 7 feet of drawdown is one-half of the current DFC drawdown based on the 14 feet of drawdown adopted by the District for all of Pecos County for the Edwards-Trinity Plateau, Pecos Valley, and Trinity Aquifer. But District rule 10.5 provides more

specific allowable drawdown for MZ1 based on the boundaries of MZ1. The District has adopted these rules to address more locally specific conditions for MZ1.

- MPGCD utilized the best available science in establishing the water-level thresholds and reconciling the thresholds to the DFCs and available groundwater models – The District has developed a robust monitoring well system to assess aquifer conditions on a daily basis in MZ1. The District has expended considerable resources to perform detailed evaluations of historical water-level measurements and quantitative modeling to establish thresholds for MZ1.
- The current water-level thresholds are based on the best available historical data, are designed to ensure that the aquifer does not reach the deepest depths-to-water measured during the period of highest historical usage, and are protective of the aquifer and Wells in MZ1 – the current thresholds are based on measured water levels where available and on correlated modeling where measurements were not available. In fact, once Cockrell’s own historical monitoring data were made available for comparison to the District’s then adopted triggers, it became clear that the current thresholds are likely conservative and that even more protective of the aquifer than initially believed. This conclusion is based on repetitive drawdown and recovery cycles associated with irrigation within MZ1, which comprises more than 95 percent of all local pumping. In fact, the identified “summer thresholds” in the District’s existing Rules are also based on measurements and correlated modeling, and correspond to overall pumping rates. FSH modeled the drawdown-recovery responses under scenarios in which FSH water is exported for municipal supplies, and determined that the shallowest water levels would be deeper, but the deepest water levels would be shallower than historical lows.
- Cockrell’s proposed rule determining “unreasonable impacts” does not incorporate proper understanding of all historical data – Cockrell states in its proposed rule that 7 feet of drawdown in any year from the water levels measured on September 1, 2018 in all the MZ1 Monitoring Wells would constitute “unreasonable impacts.” There are many problems with Cockrell’s conclusionary arbitrary metric.
- ✓ September 1<sup>st</sup> is not a reliable time for baseline measurements – the most reliably representative water levels in wells completed in the Edwards Trinity (Plateau) Aquifer within MZ1 are measured during periods when the least amount of water is pumped. This condition generally occurs in the winter months based on historic use patterns and observed water levels. In fact, MPGCD’s thresholds are based on a “recovered” or “winter” water level measurements. Water levels measured during September would require a complex adjustment to account for wells that are still pumping. While there may be some wells pumping to irrigate winter crops, it is clear from historic patterns in water level measurements that winter measurements provide good insight into aquifer conditions because lateral inflows have been allowed to “refill” MZ1. This timing reduces the

uncertainty that would be associated with using the proposed September water level measurements as a basis for determining “unreasonable impacts.”

- ✓ 7 feet of average water-level change occurs under current permitted pumping and recent pumping patterns – The attached Table 1 provides a summary of water level measurements collected on September 1 and during the winter during 2008 through 2023. For the MZ1 Well network, there are water level measurements on September 1 for all Wells for nine years (2014-2016, and 2018-2023). The average water level on September 1 of each year for the Monitoring Well network is shown in Table 2 below. Note that the water levels in Table 1 and Table 2 are based on the District’s database. However, in some instances a measurement specifically for September 1<sup>st</sup> was not available; therefore, the date closest to September 1<sup>st</sup> was used. Also, the “winter” water levels are based on the District’s water-level measurements, but the interpretation of when the “winter” water level occurred was made by AGS and TGI, not the District.

Table 2. Summary of Average Water levels on September 1 for MZ1

<b>Year</b>	<b>Average Water Level on September 1</b>
2014	171.60
2015	156.99
2016	150.94
2017	Not available
2018	149.91
2019	143.06
2020	147.17
2021	145.16
2022	150.77
2023	149.30

The minimum September 1 average water level is 143.06 feet in 2019. The maximum September 1 average water level is 171.6 feet in 2014. The range between the highest and lowest value of September 1 average water level during the 9 years reflected in Table 2. is 28.54 feet. In other words, the natural variation of the September 1 average water

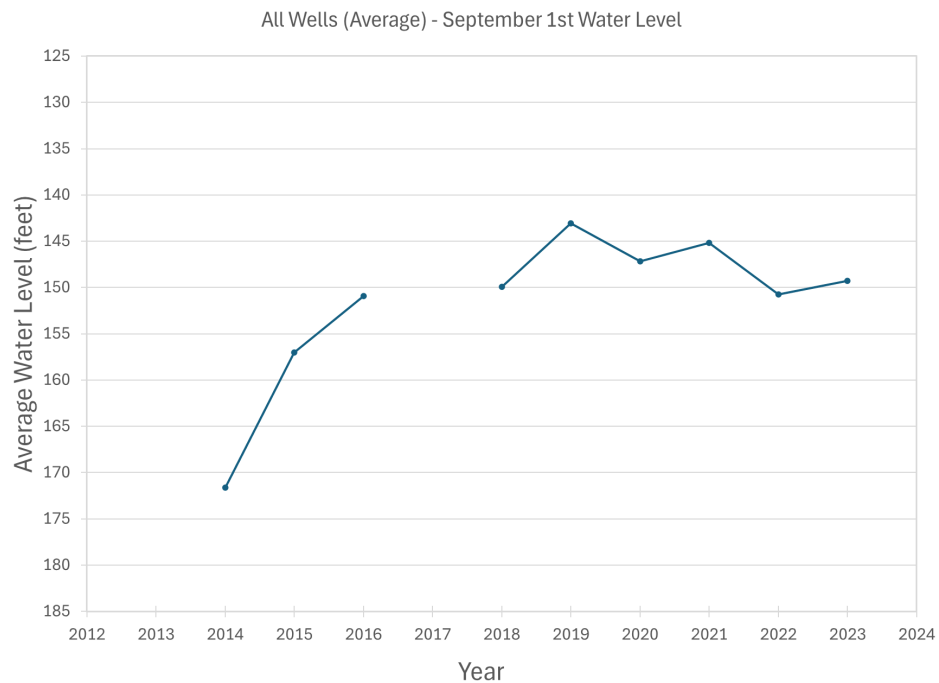
level is over 28 feet. And this 28-foot range represents the natural variation in just the 9 years for which complete records exist.

Based on historical water level patterns in past decades when pumping was greater than recent years, it is clear that the natural range in water level variation is greater than 28 feet, even though data is not available for the MZ1 network during those periods. More insight into the natural variation in water levels during the 9 years shown in Table 2. can be obtained by calculating the “standard deviation” of the 9 values for September 1 values. The “standard deviation” is a common statistical measure indicating the natural spread or variation of values relative to the average.

For the 9 years data is available, the standard deviation is 7.98 feet. Cockrell’s proposed metric of 7 feet to define “unreasonable impact” clearly does not account for natural variability in MZ1 in the 9 years measured. As mentioned above, the historical water level measurements in the Wells in MZ1 containing the longest historical record indicate that the aquifer was not harmed by greater pumping volumes, and that the aquifer rebounded from significantly lower water levels than those observed in the 9 years when data is available from the full network reflected in Table 2.

- ✓ 2018 is an arbitrary time to use in setting an index metric. Seasonal pumping conditions can vary significantly from year to year, and September is always during the irrigation season. Therefore, September measurements do not accurately reflect a consistent and seasonal aquifer condition. Figure 1 plots the average September 1 water level for each of the 9 years reflected in Table 2. As noted above, the lowest value is 171.60 feet in 2014, which is 21.69 feet below the 2018 average of 149.91. History demonstrates that the aquifer was not harmed by this greater production, and production was not hindered during 2014. However, Cockrell’s proposed metric and rule would have triggered drastic curtailments even though history shows that the water levels increased over 20 feet in the next two years.

Figure 1. Plot of Average Water Level in All MZ1 Wells on September 1



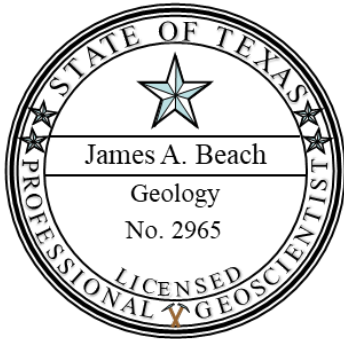
- ✓ The fact that such changes occurred historically, and occur under current permitting and pumping conditions, supports the conclusion that the Cockrell proposal and arbitrarily selected metric is fundamentally flawed.

## Summary

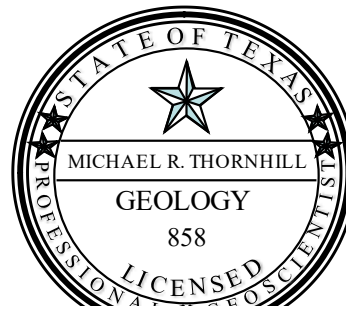
The MPGCD's current Rules and associated water-level thresholds for MZ1 are based on the best available data and science. They provide protection to the aquifer, wells, and historical uses of the aquifer in general, and specifically within MZ1. Cockrell's proposed rule is based on flawed and inaccurate interpretation of the dynamics of the aquifer in MZ1. Specifically, the proposed rule:

- ❖ does not account for observed historical data and detailed associated evaluations by the MPGCD. MPGCD's detailed studies validated the current water-level thresholds, and render unnecessary the proposed rule changes. The aquifer and Wells in MZ1 are protected.
- ❖ does not allow for reasonable pumping from MZ1. Lower water levels than the proposed rule would allow have been observed in the recent past (2014) and in prior decades. The scientifically unsupported metric associated with "unreasonable impact" Cockrell proposes as necessary to protect the aquifer and Wells in MZ1 is contradicted by Cockrell's own data, which have shown required production can be reasonably achieved at lower water levels.

If you have any questions or would like to discuss, please feel free to contact me via e-mail at [mthornhill@tgi-water.com](mailto:mthornhill@tgi-water.com) or via phone at (512) 244-2172 (office) or (512) 656-1063 (cell). We appreciate the opportunity to assist you in our specialty.



The seal appearing on this document was authorized by James A. Beach, P.G. 2965 on October 12, 2024  
Advanced Groundwater Solutions, LLC  
(TBPG Firm Registration No. 50639)



The seal appearing on this document was authorized by Michael R. Thornhill, P.G. 858 on October 12, 2024. Thornhill Group, Inc.  
(TBPG Firm Registration No. 50346)

## APPENDIX "A"

### Table 1: **MPGCD MZ 1 Monitoring Wells** **Winter Water Level Comparisons to September 1 Water Level**

**Table 1. MPGCD MZ 1 Monitoring Wells - Winter Water Level Comparisons to September 1 Water Level**

Monitor Well	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
<b>S-45</b>	Winter Water Level (Date)	86.65 (2/26/2008)	89.26 (2/17/2009)	89.29 (2/25/2010)	92.31 (2/16/2011)	98.46 (2/16/2012)	97.98 (2/8/2013)	102.66 (1/22/2014)	95.42 (3/27/2015)	92.23 (2/17/2016)	91.74 (2/16/2017)	92.90 (2/7/2018)	87.15 (2/7/2019)	89.32 (1/8/2020)	92.46 (2/28/2021)	92.15 (2/9/2022)	90.56 (2/9/2023)
	September 1 <sup>st</sup> Water Level	128.92	133.06	120.45	**	**	**	152.04	136.6	114.91	**	116.90 (9/11/2018)	115.15 (9/4/2019)	128.65 (9/8/2020)	114.73	120.51	126.2
<b>S-6</b>	Winter Water Level (Date)	111.06 (1/6/2008)	103.97 (2/18/2009)	109.76 (2/24/2010)	124.19 (3/14/2011)	128.10 (2/14/2012)	130.58 (2/7/2013)	126.85 (2/18/2014)	122.36 (3/27/2015)	118.77 (2/17/2016)	116.39 (2/21/2017)	116.90 (2/7/2018)	113.89 (1/22/2019)	113.50 (2/19/2020)	127.17 (1/7/2021)	123.71 (2/20/2022)	103.25 (2/20/2023)
	September 1 <sup>st</sup> Water Level	152.55	162.23	**	191.84	195.64	187.32	193.56	181.56	157.73	154.37	169.11	155.50 (9/4/2019)	164.50 (9/17/2020)	153.62	159.00 (9/8/2022)	142.67
<b>M-9</b>	Winter Water Level (Date)	*	*	239.08 (2/25/2010)	248.50 (2/13/2011)	258.52 (1/18/2012)	251.71 (2/7/2013)	255.39 (2/18/2014)	249.29 (3/28/2015)	245.02 (2/19/2016)	243.81 (2/21/2017)	244.70 (2/7/2018)	240.50 (2/7/2019)	243.00 (3/9/2020)	251.25 (3/8/2021)	251.17 (2/21/2022)	245.06 (2/22/2023)
	September 1 <sup>st</sup> Water Level	263.05 (9/23/2008)	270.29 (9/18/2010)	267.15	299.53	297.97	**	306.94	288.66	277.98	277.4	287.47	264	279	273.12	278.91	274.5
<b>C-5</b>	Winter Water Level (Date)	*	*	*	32.18 (2/16/2011)	40.00 (2/14/2012)	40.01 (2/6/2013)	40.61 (2/21/2014)	36.19 (3/27/2015)	32.36 (2/17/2016)	28.76 (2/21/2017)	31.34 (1/25/2018)	26.58 (2/5/2019)	27.00 (2/19/2020)	34.50 (3/8/2021)	32.75 (2/9/2022)	30.55 (2/12/2023)
	September 1 <sup>st</sup> Water Level	**	**	60.87	91.51	**	101.92	89.92 (9/20/2014)	76.73	97.27	56.3	69.2	57.89	69.88	54.28	59.92	65.37
<b>Interstate</b>	Winter Water Level (Date)	*	*	44.89 (3/1/2010)	46.85 (2/20/2011)	55.61 (3/22/2012)	54.87 (3/9/2013)	58.54 (3/5/2014)	49.84 (3/30/2015)	47.35 (2/19/2016)	48.29 (2/23/2017)	43.01 (2/17/2018)	43.05 (3/1/2019)	47.10 (2/4/2020)	47.27 (3/9/2021)	50.35 (3/10/2022)	48.51 (2/21/2023)
	September 1 <sup>st</sup> Water Level	**	**	63.96	83.6	87.48	90.95 (8/21/13)	85.13	74.39	70.96	64.79	69.37	69.1 (9/9/2019)	70.10 (9/10/2020)	67.67	75.27	73.59
<b>Prison</b>	Winter Water Level (Date)	178.57 (1/3/2008)	177.70 (2/1/2009)	179.84 (3/1/2010)	191.38 (3/1/2011)	194.71 (2/1/2012)	191.45 (2/1/2013)	198.27 (3/1/2014)	190.05 (3/1/2015)	186.82 (2/1/2016)	184.00 (2/1/2017)	183.49 (2/1/2018)	177.70 (3/1/2019)	180.55 (3/1/2020)	186.30 (3/1/2021)	191.08 (2/21/2022)	185.75 (2/22/2023)
	September 1 <sup>st</sup> Water Level	209.46	217.29	209.84	241.3	239.46	238.77	247.22	232.5	248.09	217.88	230.52 (9/6/2018)	212.30 (9/4/2019)	222.25 (9/17/2020)	214.62	219.27	220.8 (9/13/2023)
<b>Cockrell</b>	Winter Water Level (Date)	*	*	*	*	213.37 (2/14/2012)	214.17 (2/1/2013)	219.83 (3/4/2014)	213.61 (3/4/2015)	207.15 (3/2/2016)	205.90 (2/7/2017)	205.75 (2/2/2018)	201.90 (2/5/2019)	203.15 (2/19/2020)	215.25 (3/17/2021)	206.15 (3/1/2022)	209.20 (2/22/2023)
	September 1 <sup>st</sup> Water Level	**	**	**	**	267.75 (9/5/2012)	271.08 (9/3/2013)	276.93 (9/3/2014)	257.70 (9/8/2015)	241.30 (9/8/2016)	238.55 (9/4/2017)	253.48 (9/6/2018)	235.65 (9/4/2019)	245.65 (9/17/2020)	237.78	243.6	245.64
<b>King-Woodward</b>	Winter Water Level (Date)	111.67 (1/15/2008)	*	114.97 (1/27/2010)	116.00 (2/4/2011)	123.42 (2/3/2012)	131.82 (1/2/2013)	125.29 (3/4/2014)	120.64 (3/3/2015)	118.55 (2/3/2016)	112.90 (2/6/2017)	116.30 (1/3/2018)	113.05 (2/1/2019)	114.05 (2/4/2020)	117.80 (3/9/2021)	135.66 (3/2/2022)	154.48 (1/1/2023)
	September 1 <sup>st</sup> Water Level	**	**	**	**	168.67 (9/4/2012)	**	169.54 (9/3/2014)	156.64 (9/9/2015)	136.85 (9/9/2016)	139.45	145.80 (9/4/2018)	138.30 (9/9/2019)	140.17 (9/10/2020)	153.98	160.92	164.27
<b>Goldman</b>	Winter Water Level (Date)	*	*	29.29 (2/1/2010)	32.30 (2/2/2011)	36.75 (2/22/2012)	36.04 (3/1/2013)	37.83 (3/4/2014)	33.03 (4/2/2015)	30.95 (2/2/2016)	30.25 (2/16/2017)	30.65 (2/1/2018)	29.27 (2/1/2019)	28.85 (3/2/2020)	31.10 (3/9/2021)	34.61 (3/4/2022)	31.85 (2/21/2023)
	September 1 <sup>st</sup> Water Level	**	**	**	**	66.83 (9/5/2012)	69.17 (9/3/2013)	63.08 (9/3/2014)	53.53 (9/4/2015)	46.85 (9/6/2016)	47.05	48.60 (9/4/2018)	47.60 (9/9/2019)	46.10 (9/10/2020)	47.74	54.20	53.10
<b>Cemetery</b>	Winter Water Level (Date)	145.05 (1/16/2008)	*	143.97 (2/3/2010)	142.83 (2/3/2011)	153.42 (1/20/2012)	*	157.83 (1/24/2014)	*	*	*	142.00 (3/16/2018)	133.00 (3/28/2019)	*	*	61.50 (3/31/2022)	*
	September 1 <sup>st</sup> Water Level	**	**	**	**	153.83 (9/12/2012)	156.67 (9/19/2013)	164.30 (9/15/2014)	148.00 (8/25/2015)	145.60 (9/16/2016)	146.00 (8/16/2017)	138.33 (8/20/2018)	143.58 (8/23/2019)	139.50 (8/26/2020)	147.40 (8/31/2021)	152.54 (9/1/2022)	146.15 (9/1/2023)
<b>Carpenter</b>	Winter Water Level (Date)	*	*	*	*	*	102.50 (3/20/2013)	113.67 (3/12/2014)	94.98 (3/18/2015)	94.45 (1/25/2017)	94.25 (1/26/2018)	92.85 (1/25/2019)	92.60 (2/27/2020)	92.35 (3/31/2021)	94.64 (3/2/2022)	93.60 (2/18/2023)	
	September 1 <sup>st</sup> Water Level	**	**	**	**	131.21 (9/14/2012)	138.25 (9/19/2013)	138.98 (9/15/2014)	120.63 (9/25/2015)	122.75 (9/26/2016)	121.00 (9/16/2017)	120.27 (9/25/2018)	134.60 (8/29/2019)	113.10 (8/26/2020)	131.79	134.28	129.98

\* No measured water level within the months of January, February, or March.  
 \*\* No measured water level within 30 days of September 1<sup>st</sup>.

LAW OFFICES OF  
**McCARTHY & McCARTHY, L.L.P.**

1122 COLORADO STREET, SUITE 2399  
AUSTIN, TEXAS 78701  
(512) 904-2310  
(512) 692-2826 (FAX)

October 14, 2024

Middle Pecos Groundwater Conservation District  
Attn: Board of Director  
c/o Ty Edwards, General Manager  
P.O. Box 1644  
Fort Stockton, Texas 79735

*Via E-mail*

Re: Cockrell Investment Partners LP's August 19, 2024 Petition for Rulemaking to mandate a Mitigation Fund and Guidelines

Dear Directors:

On behalf of Fort Stockton Holdings, LP ("FSH") and Williams Farms L.P. ("Williams"), I am writing to request the Board deny the Petition for Rulemaking filed on August 19, 2024, by Cockrell Investment Partners LP ("Cockrell") to amend District Rule 16.1 to mandate the District impose a \$0.20 per thousand gallon "export fee" on groundwater produced and exported from the District, and to adopt a new rule creating a formal mitigation fund and impose guidelines for the operation of the mitigation fund which exceed the authorizations enacted by the Texas Legislature in 2023 (the "Petition"). A copy of the Petition is appended hereto as "Attachment No. 1" for reference purposes.

The District's current Rule 16.1 reads as follows:

**RULE 16.1 GROUNDWATER EXPORT FEE**

**(a) The District may impose an export fee or surcharge, established by Board resolution, for export of groundwater out of the District using one of the following methods:**

- (1) a fee negotiated between the District and the exporter; or**
- (2) a rate not to exceed 20 (twenty) cents for each thousand gallons of water exported from the District.**

**If a production fee is assessed, this export fee shall not exceed 10 percent of the amount of the fee assessed for the production of water for use within the District.**

**(b) Payment of the Groundwater Export Fee shall be made at a time negotiated under 16.1(a)(1) or no later than the payment deadline established by the General Manager.**

**(c) Effective January 1, 2024, the maximum allowable rate the District may impose for an export fee under Rule 16.1(a)(2) shall increase each calendar year in accordance with Section 36.122(e-1) of the Texas Water Code. An increase in the export fee is not valid unless it is approved by the Board after a public hearing. The District may only use funds obtained from the rate increase under this subsection for costs related to assessing and addressing impacts associated with groundwater development as provided by Section 36.207 of the Texas Water Code Section, including:**

- (A) maintaining operability of wells significantly affected by groundwater development;**
- (B) developing or distributing alternative water supplies; and**
- (C) conducting aquifer monitoring, data collection, and aquifer science.**

*See* MPGCD Rule 16.1 (December 2023). Unlike Cockrell’s proposed amendment and new rule contemplated by the Petition, the District’s Rule 16.1 complies with the plain language of HB 3059 now codified in Section 36.122, Texas Water Code. A copy of HB 3059 is appended hereto as Attachment No. 2 for reference.

The Petition claims to “track HB 3059,” however, there are multiple inconsistencies of Cockrell’s proposed rule amendment and new rule with the plain language of HB 3059, which *inter alia*, include the following:

1. Cockrell’s proposed rule would limit the export fee options authorized by Section 36.122 to only a mandatory \$0.20/1000 gallons exported. This would deprive the District of the legislatively mandated option, exercisable in the District’s discretion, to negotiate a different fee with the exporting permittee.
2. Cockrell’s proposed rule would make the annual 3% increase in the export fee mandatory thereby (i) removing the Board’s discretion to elect, or not, to adopt the increase in any given year, and (ii) ignoring the unambiguous statutory mandate in HB 3059 for the Board to conduct a hearing each year before any such increase could be lawfully adopted .
3. Cockrell’s proposed rule would expand unlawfully the uses of the mitigation fund created from the collection of the \$0.20/1000 gallon export fees authorized by Section 36.207, Texas Water Code, as amended by HB 3059, including a likely unconstitutional mandate for the District to pay permittees and landowners some form of reparation or damages to “recoup the adverse economic impacts caused by the decline of groundwater levels.”<sup>1</sup>

For the reasons set forth above, and in light of the plain language of HB 3059 amending Section 36.122, Texas Water Code, which demonstrates the inconsistencies of the Cockrell proposal with the unambiguous intent of the Texas Legislature, FSH and Williams respectively request the Board deny the Petition.

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<sup>1</sup> *See* Tex. Const. Art. 3, §52(a).

October 14, 2024

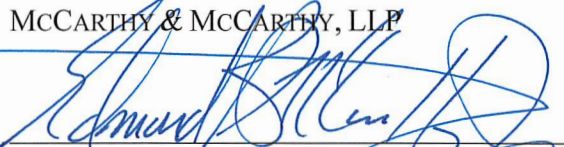
Page 3

Thank you for your favorable consideration of this request. Should you have any questions, please feel free to call me. By copy of this letter I am copying both the District's General Counsel, Michael Gershon, and Counsel for the Petitioner, Ryan Reed.

Best wishes.

Sincerely,

MCCARTHY & MCCARTHY, LLP



Edmond R. McCarthy, Jr.  
Attorneys for Fort Stockton Holdings, LP  
& Williams Farms, LP

ERM/tn

Encl.

cc (via e-mail):

Cockrell Investment Partners, LP  
Attn: Ryan Reed, Counsel  
Michael Gershon, General Counsel, MPGCD  
Fort Stockton Holdings, LP

## **Attachment No. 1**

Petition for Rulemaking filed on August 19, 2024,  
by Cockrell Investment Partners LP

## MIDDLE PECOS

### Groundwater Conservation District

P. O. Box 1644, Fort Stockton, Texas 79735

Phone: 432/336-0698; Fax: 432/336-3407

Email: [mpgcd@mpgcd.org](mailto:mpgcd@mpgcd.org)

## PETITION TO ADOPT OR MODIFY A DISTRICT RULE

**Instructions:** This Petition to Adopt or Modify a District Rule form must be completed as required by District Rule 6.5 and filed at the District office. Each rule adoption or modification requested must be submitted on a separate Petition to Adopt or Modify a District Rule form.

A person unable to comply with any procedures under District Rule 6.5, or to provide the information required by this form, may file a written explanation as to why compliance with the required procedure(s) is not possible along with a written request that the District waive the specific procedure(s). The written explanation and written request must be submitted to the District Office at the same time as this Form.

---

*Additional information may be attached to this form.*

- 1. Text of Proposed Rule or Rule Modification** (underline words proposed to be added to the text of the current rules and strike through words proposed to be deleted from the text of the current rules):

Restated Rule 16.1:

The District shall charge an export fee or surcharge of twenty (20) cents per thousand gallons of water exported by a permit holder, which shall automatically increase at a rate of three (3) percentage per year to the maximum extent allowed by Texas law.

Proposed New Rule entitled "Mitigation Fund":

The District shall, upon collection of the export fee or surcharge, establish a mitigation fund, which shall be maintained and utilized for the purposes of (1) making grants, loans, or contractual payments to achieve, facilitate, and expedite reductions in groundwater pumping, (2) developing or distributing alternative water supplies, and (3) maintaining the operability of wells significantly affected by groundwater development. The District shall, upon application, provide permittees who demonstrate that they have been significantly affected by the production and export of water with the resources necessary to operate their wells and recoup the adverse economic impacts caused by the decline of groundwater levels.

- 2. Written Explanation of the Intended Purpose of the Proposed Rule or Rule Modification:**

The Texas Legislature recognizes that large scale production for export of groundwater has, in fact, resulted in negative socioeconomic impacts to local users, a concern evidenced by the passage of HB 3059 during the 88th legislative sessions. To ensure that the District is protecting groundwater for all permit holders, Cockrell requests that the District adopt the Proposed Rule to create a fund that is available for permit holders adversely affected by the production and export of groundwater. The Proposed Rule, which tracks HB3059, requires the District to create a fund from resources already available to it, maximize that fund, and allow groundwater permit holders negatively affected by increased pumping of the aquifer to receive compensation for the economic costs that will arise from a decline in the aquifer levels.

**3. Allegation of Injury or Inequity that could Result from Failure to Adopt Proposed Rule**

**or to Modify Current Rule:**

The District's Management Plan does not provide for a year-round floor or thresholds with production cutbacks or any other real consequences for damages that may occur as a result of declining aquifer levels. Without significant rulemaking changes in cutback threshold levels, the following issues are likely to occur: declining water levels, decreased transmissibility, decreased levels of production, increased levels of solids in the water, higher production costs, and potential need to lower pumps, install larger pumps, drill deeper wells, and even re-drill some wells. Lack of proper enforcement of pumping cutbacks based on water level triggers increases the risk of long-term damage to the aquifer and its ability to adequately recover after the summer irrigation season. Increased strain on the aquifer could also damage other nearby aquifers. Individual permittees, such as Belding Farms, may experience a loss or degradation of water at or below historic levels. The cost to drill deeper and retrofit wells, as well as the economic impacts of loss of crop because of a decrease in water production or water quality, should not be borne by a permit holder who has made investment decision based on historic use of groundwater. A mitigation fund will allow the District to impose a surcharge on the commercial sale and export of water and establish a fund to assist permittees affected by the increased production.

**4. Description of Petitioner(s) Real Property Interest in Groundwater in the District (attach**

**proof of real property interest in groundwater located within the District for each petitioner):**

Cockrell is a landowner within the District. Cockrell/Belding Farms owns a 2,205 acre commercial pecan orchard consisting of approximately 77,000 trees. For its orchard, Cockrell utilizes its substantial water rights in the Edwards-Trinity Aquifer, which supports its pecan orchard.

Cockrell currently has a Historic Existing Use Permit that was issued in July 2006 for 16 wells in the amount of 15,528.846 acre feet, which is used to, among other things, supply water/irrigation requirements for its pecan orchard consisting of approximately 77,000 trees. In fact, Cockrell's 2,205-acre orchard is a part of 6,663.18 acres owned and leased by Cockrell.

**Petitioner(s) Information** (Please include information for additional petitioners as appropriate).

**Petitioner #1:**

Cockrell Investment Partners, LP and Belding Farms, c/o Ryan C. Reed, Attorney  
(210) 222-9494; rreed@pulmanlaw.com

First Name	Last Name	Phone Number	Email Address	
<u>Pulman, Cappuccio &amp; Pullen, LLP, 2161 NW Military Hwy, Suite 400, San Antonio, TX 78213</u>				
Physical Address		City	State	Zip code

Pulman, Cappuccio & Pullen, LLP, 2161 NW Military Hwy, Suite 400, San Antonio, TX 78213  
Mailing Address

/s/ Ryan C. Reed 08/19/2024

*Signature* *Date*

**Petitioner #2:**

First Name	Last Name	Phone Number	Email Address	
<u>Physical Address</u>				
Physical Address		City	State	Zip code

<u>Mailing Address</u>		City	State	Zip code
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*Signature* *Date*

**Petitioner #3:**

First Name	Last Name	Phone Number	Email Address	
<u>Physical Address</u>				
Physical Address		City	State	Zip code

<u>Mailing Address</u>		City	State	Zip code
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*Signature* *Date*

*Additional information may be attached to this form.*

## **Attachment No. 2**

Copy of HB 3059 Amending Sections 36.122 & 36.207  
regarding Export Fees and their use

AN ACT

relating to the export fee charged for the transfer of groundwater from a groundwater conservation district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.122, Water Code, is amended by amending Subsections (e) and (p) and adding Subsections (e-1), (e-2), and (e-3) to read as follows:

(e) Except as provided by Subsection (e-1), the ~~[The]~~ district may impose an export fee or surcharge using one of the following methods:

(1) a fee negotiated between the district and the exporter;

(2) for a tax-based district, a rate not to exceed 20 cents ~~[the equivalent of the district's tax rate per hundred dollars of valuation]~~ for each thousand gallons of water exported from the district ~~[or 2.5 cents per thousand gallons of water, if the district assesses a tax rate of less than 2.5 cents per hundred dollars of valuation]~~; or

(3) for a fee-based district, a rate not to exceed the greater of 20 cents for each thousand gallons or a 50 percent surcharge, in addition to the district's production fee, for water exported from the district.

(e-1) Effective January 1, 2024, the maximum allowable rate a district may impose for an export fee or surcharge under

1 Subsection (e)(2) or (e)(3) increases by three percent each  
2 calendar year.

3 (e-2) A district governed by a special law in regard to an  
4 export fee or surcharge on water exported from the district may  
5 charge an export fee or surcharge in accordance with that special  
6 law or in accordance with Subsections (e) and (e-1).

7 (e-3) An export fee or surcharge imposed under Subsection  
8 (e) or an increase in an imposed export fee or surcharge is not  
9 valid unless it is approved by the board after a public hearing.

10 (p) Subsections [Subsection] (e), (e-1), and (e-2) do  
11 [does] not apply to a district that is collecting an export fee or  
12 surcharge on March 1, 2001.

13 SECTION 2. Section 36.207, Water Code, is amended to read as  
14 follows:

15 Sec. 36.207. USE OF FEES. (a) A district may use funds  
16 obtained from administrative, production, or export fees collected  
17 under a special law governing the district or this chapter for any  
18 purpose consistent with the district's approved management plan,  
19 including, without limitation, making grants, loans, or  
20 contractual payments to achieve, facilitate, or expedite  
21 reductions in groundwater pumping or the development or  
22 distribution of alternative water supplies or to maintain the  
23 operability of wells significantly affected by groundwater  
24 development to allow for the highest practicable level of  
25 groundwater production while achieving the desired future  
26 conditions established under Section 36.108.

27 (b) A district may use funds obtained from the amount that

1 an export fee is increased under Section 36.122(e-1) on or after  
2 January 1, 2024, only for costs related to assessing and addressing  
3 impacts associated with groundwater development, including:

4 (1) maintaining operability of wells significantly  
5 affected by groundwater development;

6 (2) developing or distributing alternative water  
7 supplies; and

8 (3) conducting aquifer monitoring, data collection,  
9 and aquifer science.

10 SECTION 3. This Act takes effect September 1, 2023.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3059 was passed by the House on April 18, 2023, by the following vote: Yeas 117, Nays 27, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3059 on May 23, 2023, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3059 on May 28, 2023, by the following vote: Yeas 119, Nays 25, 2 present, not voting.

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Chief Clerk of the House

H.B. No. 3059

I certify that H.B. No. 3059 was passed by the Senate, with amendments, on May 18, 2023, by the following vote: Yeas 25, Nays 6; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3059 on May 27, 2023, by the following vote: Yeas 25, Nays 6.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

October 8, 2024

Middle Pecos Groundwater Conservation District  
P.O. Box 1644  
Fort Stockton, Texas 79735  
mpgcd@mpgcd.org

Re: August 19, 2024 petitions by Cockrell Investment Partners, LP and  
Belding Farms to Adopt or Modify District Rules.

District Board and staff:

Authorized representatives of my clients, the City of Abilene and the City of San Angelo, have asked me to respond to the August 19, 2024 Cockrell/Belding rulemaking petitions on the Cities' behalf. I note that the Cockrell/Belding petitions address distinct issues—one requesting a new production restriction threshold and one requesting the creation and funding of a mitigation program. I address each petition independently below.

#### Petition to Create New Production Restrictions

In December 2023, petitioner Cockrell Investment Partners, LP, filed a petition to modify District rules that targeted the Cities' ability to produce water pursuant to their groundwater supply contract with Fort Stockton Holdings, L.P. Then, as now, Cockrell proposed cutback rules that could have significant implications on the expectations that formed the basis of the Cities' agreement with FSH.

Based on the Cities' analysis, the Cockrell/Belding cutbacks could be triggered by production unrelated to any groundwater pumped by the Cities. In fact, the Cockrell/Belding cutback threshold could be triggered without the Cities' producing any groundwater whatsoever, but the cutbacks would still only apply to the Cities. The proposed rule makes the Cities exclusively responsible for carrying the weight of the cutbacks even if Cockrell/Belding production is responsible for the drawdown.

Saddling the Cities with such a significant, arbitrary burden could dramatically upend the value of the FSH permit that forms the basis of the Cities' contract. In addition, if the District adopted the Cockrell/Belding proposed "*September 1, 2018 average + 7 feet*" threshold, the District would in effect be abandoning the thresholds that formed the basis of the District's negotiated settlement with Fort Stockton Holdings, L.P. I hope the board can see that there is nothing reasonable about this proposed cutback scheme.

#### Petition to Create a Mitigation Program

The Cities recognize the District's new authority created with the passage of HB 3059, including assessing the Cities up to 20 cents per 1,000 gallons of groundwater that they eventually transport in any given year. Whether the board creates any such program now, and whether it sets the initial assessment at the maximum rate allowed by law, is the board's prerogative.

The Cities note that they have not produced or transported any groundwater subject to the District's jurisdiction. Cockrell/Belding obviously know this. The petitioners do not explain in their rulemaking request, though, why they need a mitigation program immediately, nor do they explain the basis for their proposed rate. They have suffered no injury associated with groundwater production. They do not currently need public financial aid to mitigate against impacts from groundwater transports.

The Cities request that the board deny the Cockrell/Belding mitigation program rules because their proposed rules are not well thought out and because Cockrell/Belding have not justified them. It is an ad hoc, primitive approach to fixing a problem that does not exist. But to be clear, the Cities do not oppose the idea of a mitigation program. In fact, they support the concept. Since the time the Cities contracted with FSH, they have stated their commitment to local leaders to be good neighbors to the people of Pecos County. The current petition, if anything, provides an opportunity for the Cities to express the same commitment to the District. The Cities propose to work together with the District and other local interests to develop a mitigation plan that addresses the needs of the communities, irrigators, and other local user groups potentially impacted by groundwater transports. The Cities are willing to begin that collaboration immediately.

Middle Pecos Groundwater Conservation District

October 8, 2024

Page 3

Neither of the Cockrell/Belding petitions advance the District's efforts to meet its legislative mandate, within the confines of its delegated authority, in a reasoned and responsible manner. On behalf of the City of Abilene and the City of San Angelo, I respectfully request that the District board denies both petitions.

Sincerely,



Jason Hill

cc: Robert Hanna  
City Manager, City of Abilene

Daniel Valenzuela  
City Manager, City of San Angelo



Middle Pecos Groundwater Conservation District  
P.O. Box 1644  
Fort Stockton, Texas 79735  
mpgcd@mpgcd.org

October 15, 2024

**Re: Petition for Rulemaking by Cockrell Investment Partners, LP on August 19, 2024**

Dear Members of the Board:

On behalf of the City of Midland, I respectfully request that the Board deny the Petition for Rulemaking submitted by Cockrell Investment Partners, LP ("Cockrell") concerning the proposed definition of "unreasonable impact" within the District's rules.

It is our understanding that the District has already implemented a comprehensive and well-designed monitoring program for Management Zone No. 1 ("MZ1"), which provides the necessary oversight to determine whether additional regulatory actions are warranted. The District's consulting team is currently engaged in a detailed analysis of the available hydrogeologic data, and we expect a thorough report on the implications of existing management practices in MZ1 upon completion of that review.

Moreover, the permit issued to Fort Stockton Holdings, LP includes specifically negotiated Special Conditions intended to protect the aquifer in MZ1. Given that these protections are in place and that the District's study of the area is ongoing, it is premature to consider amending the District's rules based on Cockrell's Petition. Any rule modification at this stage would be unnecessary and unjustified without the full benefit of the District's ongoing evaluation and the additional data expected from that study.

For these reasons, we urge the Board to deny Cockrell's Petition for Rulemaking. The Petition is premature and would interfere with the District's current and carefully developed management framework for groundwater production in the Edwards-Trinity aquifer system, particularly in the Leon Belding Area.

Thank you for your time and consideration of this important matter. We remain available to provide further input as necessary.

Respectfully,

Carl Craigo, PE  
City of Midland – Director of Utilities

[www.MidlandTexas.gov](http://www.MidlandTexas.gov)

Utilities • 300 N. Loraine, Midland TX 79701 • 432-685-7251

# Comparison of Cockrell’s Proposed Rules to MPGCD’s Current Rules and Policy

## I. First Petition

### A. Proposed “Restated” Rule 16.1 (Export Fees)

Summary of “Restated” Rule 16.1 (proposal to repeal and replace current rule)	Summary of Current MPGCD Rule 16.1
<p><b><u>mandates</u></b> the statutory maximum export fee of \$0.20/1,000 gal.</p> <p><b><u>automatically</u></b> increases fee by statutory maximum (3%/year)</p> <p><b><u>deletes hearing on fees and fee increases required by § 36.122(e-3)</u></b> (perhaps presuming that a § 36.101 rulemaking hearing serves as the hearing on fees?)</p>	<p><b><u>discretion</u></b> to set export fee up to statutory maximum of \$0.20/1,000 gal...</p> <p><b><u>...or a fee negotiated with the exporter</u></b> (flexibility to negotiate higher fee or to accept unique consideration (e.g., Waha/Enstor))</p> <p><b><u>discretion</u></b> to increase fee by statutory maximum (3%/year)</p> <p><b><u>after a § 36.122(e-3) hearing,</u></b> fee and fee increases set by Board resolution</p> <p><u>Note:</u> Board should call a hearing to pass a resolution adopting an export fee (and probably allowing for negotiation of fee).</p> <p><u>Note:</u> Although Cockrell did <i>not</i> raise it, current Rule 16.1(a) could and probably should be amended at some point to delete the 10% cap imposed by enabling act, as authorized by § 36.122(e-2) (N/A currently because we do not assess production fees; enabling act states that export fee cannot exceed 10% of production fees).</p>

**Bottom line:** Under existing rules, MPGCD can set \$0.20/1,000 gal. export fee and a 3% increase effective in 2024 (20.6¢/1,000 gal.), while maintaining flexibility to negotiate upward/downward on fees or for consideration other than fee payment (e.g., Enstor/Waha), by adopting a resolution after a hearing on fees.

I. First Petition

B. Proposed New Rule (requiring District to award funds from a dedicated mitigation fund on specific applied-for requests)

Summary of Proposed Rule	§ 36.207 (Use of Fees) (amended by HB 3059)	Summary of Current MPGCD Rules and Policy
<p><b><i>mandates</i></b> export fees be deposited into a Mitigation Fund, and that the fund be used for <b><i>limited, listed purposes...</i></b></p> <p>requires that Mitigation Fund be supplemented and maximized by “resources already available to it [MPGCD]”</p> <p>contemplates using [<math>\leq 3\%</math> increase] for <b><i>broader</i></b> purposes than listed in § 36.207(b)</p> <p>mandates that MPGCD disburse funds from Mitigation Fund to qualified applicants (permit holders) who demonstrate a significant effect from export</p>	<p>export fees may be used for <b><i>broad purposes</i></b> under § 36.207(<b><i>a</i></b>)</p> <p>no statutory requirement though § 36.207(a) would authorize earmarking or creating a fund for mitigation</p> <p>§ 36.207(<b><i>b</i></b>) requires that GCDs earmark “amount that an export fee is increased under Section 36.122(e-1)” [<math>\leq 3\%</math> increase] for purposes listed in statute</p> <p>silent – nothing express in the statute; excludes exempt users</p>	<p>export fees are used to fund budget for <b><i>broad purposes</i></b> authorized by statute</p> <p>MPGCD has authority to use its tax and export-fee revenues for mitigation and related research whether or not it has a fund—each year anticipated expenses could be budgeted</p> <p>mandates earmarking [<math>\leq 3\%</math> increase] for purposes listed in statute</p> <p>MPGCD has authority to use its tax and export-fee revenues for mitigation; it is recommended that any landowner-specific disbursement be developed to equitably consider impacts and equitably disburse funds</p> <p>It’s a mixed science-policy question whether effects will be unreasonable and, if so, whether to start setting aside \$\$ for future mitigation. Other districts and stakeholders are estimating potential effects (e.g., Gonzales County UWCD, Guadalupe County GCD, Brazos Valley GCD, Post Oak Savannah GCD)</p>

Tex. Water Code § 36.207 (amendments by HB 3059 shown in underlined text):

“(a) A district may use funds obtained from administrative, production, or export fees collected under a special law governing the district or this chapter for any purpose consistent with the district’s approved management plan, including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies or to maintain the operability of wells significantly affected by groundwater development to allow for the highest practicable level of groundwater production while achieving the desired future conditions established under Section 36.108.

(b) A district may use funds obtained from the amount that an export fee is increased under Section 36.122(e-1) on or after January 1, 2024, only for costs related to assessing and addressing impacts associated with groundwater development, including:

- (1) maintaining operability of wells significantly affected by groundwater development;
- (2) developing or distributing alternative water supplies; and
- (3) conducting aquifer monitoring, data collection, and aquifer science.”

**I. First Petition**  
**C. Analysis of Cockrell’s “Allegation of Injury or Inequity”**  
**(consequences) if MPGCD does not adopt proposed rule**

<b>Alleged Injury or Inequity (Consequence)</b>	<b>Comment</b>
<p><u>lack of <b>year-round</b> floor or threshold for pumping cutbacks:</u></p> <ul style="list-style-type: none"> <li>➤ may cause loss or degradation of water at or below historic levels</li> </ul> <p><u>lack of proper enforcement of pumping cutbacks:</u></p> <ul style="list-style-type: none"> <li>➤ increases risk of: <ul style="list-style-type: none"> <li>○ long-term damage to the aquifer</li> <li>○ ability to adequately recover after summer irrigation season</li> </ul> </li> <li>➤ could damage nearby aquifers</li> <li>➤ may cause Cockrell and other permittees to experience loss or degradation of water at or below historic levels</li> </ul> <p><u>lack of Mitigation Fund deprives Cockrell and other permittees affected by export of mitigation \$\$</u></p>	<p><u>currently...no problem</u> with water quality or water levels</p> <p><u>proactively...MPGCD is:</u></p> <ul style="list-style-type: none"> <li>➤ actively monitoring aquifer and water levels from extensive well-monitoring network, real-time transducers, and near daily field measurements and sampling</li> <li>➤ relying upon and continuing multi-year, multi-million dollar research efforts</li> </ul> <p><u>MPGCD has robust enforcement rules and contingency/emergency rules if something unlikely and unforeseeable arises</u></p> <p><u>Texas law recognizes:</u></p> <ol style="list-style-type: none"> <li>(1) property rights of landowners to pump (but not a specific volume)</li> <li>(2) GCDs authority to regulate subject to possible regulatory taking</li> <li>(3) Rule of Capture (don’t have to compensate your neighbor for damages with limited exceptions)</li> <li>(4) newly evolving legislative intent to allow but not mandate mitigation</li> </ol> <p>MPGCD has discretion to budget for mitigation; it’s a policy decision whether to start setting aside \$\$ for future mitigation (see p. 2 above).</p>

**II. Second Petition**  
**A. Proposed New Rule (defining “Unreasonable Impacts”)**

Summary of Proposed Definition and Proposed Regulatory Program	Summary of Current MPGCD Rules, Regulatory Program and Research
<p><i>creates a new definition:</i></p> <p><i>“Unreasonable Impacts: In order to help achieve a balance between production and conservation of groundwater resources, and to ensure that the District is able to achieve the Desired Future Condition, the District will consider the impacts to the Edwards Trinity Aquifer to be unreasonable <u>if the average water level of all Monitoring Wells in Management Zone 1 on September 1 of any year is more than seven (7) feet less than the average water level of all Monitoring Wells in Management Zone 1 on September 1, 2018</u>”</i></p>	<p>MPGCD’s <i>existing rules address:</i></p> <p><i>“unreasonable effects”</i> on existing groundwater and surface water resources or existing permit holders <i>during permitting</i> (see § 36.113(d), Section 11 of Rules)</p> <p><i>statutory “impacts” during DFC-setting process</i> (see § 36.118(d), Section 17 of Rules)</p> <p><i>premature to establish a bright-line threshold</i> (A) prior to completion of ongoing research project and (B) without evidence of a need based on historical and real-time data from MPGCD’s extensive well-monitoring program...</p> <p>...as deliberated by Board in February, March and April 2024 (see minutes, especially March 18<sup>th</sup> Board meeting)</p>

**II. Second Petition**  
**B. Proposed New Rule (creating detailed regulatory program to address Unreasonable Impacts)**

<b>Summary of Proposed Regulatory Program</b>	<b>Summary of Current MPGCD Rules</b>
<p><i>creates a new program:</i></p> <p>if “Unreasonable Impacts” threshold is hit, then District must:</p> <ol style="list-style-type: none"> <li>1. issue notice to all permittees and public</li> <li>2. require permittees to monitor and report water levels monthly</li> <li>3. require permittees to report lowering of pumps and new pump depth</li> <li>4. suspend consideration of new export permit applications</li> <li>5. schedule Board meeting within 10 days to discuss exercise of District’s emergency powers, including curtailment of production by permittees up to 50%</li> </ol> <p><b><i><u>rationale is</u></i></b> that 7-foot threshold = 50% of acceptable DFC drawdown over 25 years, and is an objective benchmark <b><i><u>“to ensure that the District is on track to comply with the DFC”</u></i></b></p>	<p><i>premature to establish a bright-line threshold</i> (A) prior to completion of ongoing research project and (B) without evidence of a need based on historical and real-time data from MPGCD’s extensive well-monitoring program...</p> <p>...as deliberated by Board in February, March and April 2024 (see minutes, especially March 18<sup>th</sup> Board meeting)</p> <p>policy decision based on best-available science and DFC factors; current best-available science reflects that District is on track to comply with DFC</p>

**II. Second Petition**  
**C. Analysis of Cockrell’s “Allegation of Injury or Inequity”**  
**(consequences) if MPGCD does not adopt proposed rule**

<b>Alleged Injury or Inequity (Consequence)</b>	<b>Comment</b>
<p><u>Failure to define Unreasonable Impacts and establish a new cutback-based regulatory program:</u></p> <ul style="list-style-type: none"> <li>➤ may cause:               <ul style="list-style-type: none"> <li>○ long-term damage to the aquifer</li> <li>○ ability to adequately recover after summer irrigation season</li> </ul> </li> <li>➤ may cause Cockrell and other permittees to experience loss or degradation of water</li> </ul>	<p><u>currently...no problem</u> with water quality or water levels</p> <p><u>proactively...MPGCD is:</u></p> <ul style="list-style-type: none"> <li>➤ actively monitoring aquifer and water levels from extensive well-monitoring network, real-time transducers, and near daily field measurements and sampling</li> <li>➤ relying upon and continuing multi-year, multi-million dollar research efforts</li> </ul> <p><u>MPGCD has robust enforcement rules and contingency/emergency rules if something unlikely and unforeseeable arises</u></p>