

TCEQ DOCKET NO. 2025-0373-MIS

**RESTATED PETITION FOR
INQUIRY SUBMITTED BY
COCKRELL INVESTMENT
PARTNERS, L.P.
FOR REVIEW OF MIDDLE
PECOS GROUNDWATER
CONSERVATION DISTRICT**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT'S
CERTIFIED RESPONSE TO COCKRELL INVESTMENT
PARTNERS, L.P.'S RESTATED PETITION FOR INQUIRY**

TO THE HONORABLE COMMISSIONERS:

Middle Pecos Groundwater Conservation District (the "District") files this certified response to Cockrell Investment Partners, L.P.'s ("Cockrell's") restated petition for inquiry with the Texas Commission on Environmental Quality ("TCEQ") along with its Board of Directors' resolution and General Manager's affidavit,¹ and respectfully shows as follows:

I. Summary

Cockrell's Executive Summary claims that three (3) reasons support its petition under TCEQ Rule 293.23(b):

- (b)(3) - District failed to adopt rules;
- (b)(7) - District's rules do not achieve Desired Future Conditions ("DFCs") of the Edwards-Trinity aquifer; and
- (b)(8) - District's rules do not adequately protect groundwater in Groundwater Management Areas ("GMAs") 3 and 7.²

In response to Cockrell's (b)(3) claim, the District adopted rules and bylaws when it was created 25+ years ago,³ under the leadership of its Board President Glen Honaker, who *notably* was the chief executive of Cockrell's pecan farm.⁴

¹ Exhibit 1 (Board resolution) and Exhibit 2 (General Manager's affidavit).

² 30 Tex. Admin. Code § 293.23(b) (Petition Requesting Commission Inquiry).

³ Acts 1999, 76th Leg., R.S., Ch. 1331 (Senate Bill 1911).

⁴ Exhibit 3 (Bylaws and Rules). Mr. Honaker was appointed to the first-ever District Board in accordance with Senate Bill 1911 (Exhibit 4 (Commissioners Court minutes); Acts 1999,

Rules remain in effect, and have been amended many times over the past 25+ years to implement new statutory law, based on public input, and ultimately to refine the District's regulatory program. Cockrell urges TCEQ to believe that rules are the tool required to restrict Fort Stockton Holdings, L.P.'s ("FSH's") pumping, ignoring that FSH's right to pump is already significantly restricted by special permit conditions and that rules are already in place in the event further restrictions on FSH's permits are necessary. Cockrell's point is a red herring and ignores both the standard governing this proceeding in Texas Water Code § 36.3011 and the statutory tool available in § 36.113(e) for regulating individual projects by way of special permit conditions.

In response to Cockrell's (b)(7) and (b)(8) claims, the District's rules have for nearly two decades been *in place* and *designed* to achieve DFCs and adequately protect groundwater within GMAs 3 and 7. Section VI of this response examines the applicable District Rules in Rules Sections 10 (Production Limitations), Section 11 (Permitting), Section 15 (Enforcement), and Section 17 (DFCs) and how the District implements those rules.

The express language of the District's current rules *alone* satisfies the requirement of TCEQ Rule 293.23(b)(3), (7) and (8). The District has not "fail[ed] to adopt rules," the rules are clearly and specifically "designed to achieve the adopted desired future conditions," and there are "rules adopted by [the District]"...that clearly and specifically show that "groundwater in the management area [*is*] adequately protected..." Under the standard of review and the legislative intent of the statutory review process—designed to ensure accountability by districts—there is no question that the petition should be dismissed. Implementation of the rules by the District is *not* required by TCEQ's applicable standard of review, yet the District can and does show how the District has, in fact, implemented those rules to responsibly manage the Edwards-Trinity aquifer.

Cockrell's motive for its petition is obvious. Replete with references to FSH's permit in its petition, Cockrell opposes FSH's groundwater export project under

76th Leg., R.S., Ch. 1331 (Senate Bill 1911), Sections 5 and 8 (appointment of Temporary Directors)). He was elected in 2002 as an Initial Director (Senate Bill 1911, Sections 7, 10, 15(a); Acts 2001, 77th Leg., R.S., Ch. 1299 (House Bill 1258) Sections 5, 6, 7, 8 (election of Directors)). He was subsequently elected for multiple terms as a Permanent Director—serving as its Board President from 1999 until he moved out of his precinct and resigned in 2013 (see above cites and Exhibit 5 (Board meeting minutes from Feb. 19, 2013)).

contract with the Cities of Abilene, Midland and San Angelo.⁵ Having failed to restrict that project in any of its five lawsuits,⁶ three rulemaking petitions,⁷ and lobby efforts,⁸ and having failed to exercise its remedies and timely protest FSH's application,⁹ participate in legislative hearings on the FSH export,¹⁰ or speak up during town-hall meetings¹¹ or many public meetings from 2005-early 2017,¹² Cockrell now turns to TCEQ for relief.

As Cockrell's *lack of* evidence and the District's *substantial* evidence reveal, the District is a sufficiently funded, well-run groundwater conservation district.¹³

⁵ Cockrell does not dispute that FSH is under contract to sell water to these cities, and has recognized that a groundwater supply agreement and related interlocal agreement among the cities exist. *See, e.g.*, Exhibit 6 (Board minutes from May 19, 2020 and Jun. 16, 2020 meetings).

⁶ *Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist. and its Bd. President, Fort Stockton Holdings, L.P., Republic Water Co. of Texas, LLC*, Trial Court Case No. P-12176-112-CV, COA No. 08-21-00017-CV, S.Ct. No. 23-0742 (pending); *Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist. and its Gen. Manager, Fort Stockton Holdings, L.P., and the Cities of Abilene, Midland and San Angelo*, Trial Court Case No. P-8277-83-CV, COA No. 08-21-00200-CV, S.Ct. No. 23-0593 (pending); *Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist.'s Gen. Manager and Fort Stockton Holdings, L.P.*, Trial Court Case No. P-8580-83-CV, COA No. 08-23-00178-CV (pending); *Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist.*, Trial Court Case No. P-8626-83-CV (pending); *Cockrell Inv. Partners, L.P. v. Middle Pecos Groundwater Conservation Dist.*, Trial Court Case No. P-13031-112-CV (pending).

⁷ Cockrell's Petition (Dec. 19, 2023), Cockrell's second Petition (Aug. 19, 2024), Cockrell's third Petition (Aug. 19, 2024).

⁸ The affiant has personal knowledge that Cockrell's representatives have lobbied locally (e.g., Pecos County Judge) and at the Texas Legislature.

⁹ Exhibit 7 (District's July 8, 2011 order and findings of fact and conclusions of law), at Finding 12 (identifying parties who timely qualified to protest).

¹⁰ Cockrell did not participate in the hearings regarding FSH's export project or the District's handling of FSH's application held in Austin or Fort Stockton. *See, e.g.*, Exhibit 8 (notice of April 28, 2009 on House Bill 4805); Exhibit 9 (notice of Sep. 20, 2016 hearing of House Nat. Res. Comm.'s Subcomm. on Spec. Water Districts in Fort Stockton).

¹¹ Exhibit 10 (notices and minutes of Apr. 3, 2017 public forum in Fort Stockton and Apr. 6, 2017 public forum in Iraan).

¹² *See* Board agendas and minutes at <https://www.middlepecosgcd.org/agendas-and-minutes/>.

¹³ The District has a \$2+ million balance in its operating account with current fiscal year budgeted revenues of \$1.4 million, which includes a combination of incoming funds from taxes (\$1.3+ million), export fees (\$5,500), and third-party contracted-for contributions toward a research study (\$50,000). The District is proud that it maintains a balanced budget while working from a No New Revenue tax rate of \$0.0195 per \$100 of assessed

Its regulatory program has been constructed and improved over 25 years based upon decades of groundwater data, District-specific studies by many of the state's top groundwater experts (conducted by the District, and independently for the District by TWDB,¹⁴ USGS,¹⁵ and third parties¹⁶), and hundreds of hours of public meetings, hearings, and deliberation and policy judgments during monthly meetings of its elected 11-member Board of Directors.¹⁷

II. Standard of Review

The statutory standard is set forth in Texas Water Code § 36.3011(c):

[T]he commission shall...dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist...

TCEQ implemented this statute in Title 30, Texas Administrative Code § 293.23(g):

The Commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist.

valuation. The District could have adopted a \$0.021 rate without holding a public election. As reflected in all its publicly available minutes, the Board meets monthly and its staff, consultants and Directors are busy working on many needs of its constituents. See <https://www.middlepecosgcd.org/agendas-and-minutes/>.

¹⁴ See, e.g., Exhibit 11 (TWDB GAM Task Report 10-033 (January 2011)).

¹⁵ See, e.g., Exhibit 12 (USGS's Conceptual Hydrogeologic Model prepared in cooperation with Pecos County, City of Fort Stockton, Brewster County, Pecos County Water Control and Improvement District No. 1 and the District) (May 2013), Exhibit 13 (USGS's Data Collection and Compilation for a Geodatabase of Groundwater, Surface-Water, Water-Quality, Geophysical, and Geologic Data, Pecos County Region, Texas, 1930-2011 prepared in cooperation with Pecos County, City of Fort Stockton, Brewster County, Pecos County Water Control and Improvement District No. 1 and the District) (2011).

¹⁶ Third parties Enstor/Waha, 300,000-acre La Escalara Ranch, and FSH have shared their individual, private studies with the District, and the District receives robust hydrogeological and pump-test reports from permit applicants requesting annual withdrawals exceeding its Rule 11.9 thresholds.

¹⁷ The Board typically meets 10-15 times per year in regularly scheduled and special-called public meetings, hearings, and workshops. See, e.g., Jan. 17-2012-Jan. 21, 2025 Board agendas and minutes at <https://www.middlepecosgcd.org/agendas-and-minutes/>.

Subsections (c) and (d) read as follows:

The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.

The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.

Finally, the burden of proof is on the petitioner, as indicated in the official notice of TCEQ's General Counsel dated March 18, 2025. **As this proceeding is only about whether the District adopted rules that are in effect and, if so, whether the rules are designed to achieve DFCs and adequately protect groundwater within GMAs 3 and 7, Cockrell does not meet this burden.** This response will show that the attached rules and evidence establish that the District meets and exceeds this threshold requirement.

Cockrell urges TCEQ to improperly broaden the standard of review to consider Cockrell's petitions for rulemaking. Cockrell's proposed rules cannot be considered in this docket. Cockrell goes one step further to complain that the District's highly restrictive FSH permit conditions ought to be applied to all permit holders. First, there is no remedy at TCEQ to extend permit conditions imposed under Texas Water Code §§ 36.113 and/or 36.1131 to all permits in the District, by rule. Second, Cockrell's petitions for rulemaking were denied in strict accordance with Texas Water Code § 36.1025. There is no right to challenge the District's decision under § 36.1025 ("Nothing in this section may be construed to create a private cause of action for a decision to accept or deny a petition filed under this section.").

III. Cockrell's and the District's Certified Statements

The certification requirement is in TCEQ's rules, but not the statute, as recognized and discussed by the Executive Director and Office of Public Interest Counsel in TCEQ Docket No. 2024-0967-MIS and Docket No. 2025-0017-MIS. Cockrell failed to sufficiently certify its petition in its initial filing in Docket No. 2025-0017-MIS, which it withdrew. In this docket, its General Partner Texas Production Company's CEO signed a certification to "declare under penalty of perjury that it is true and correct."

Inherent in certification is the “formal assertion in writing of some fact”¹⁸ and “confirming the authenticity or truth of something.”¹⁹ Cockrell does not include a sworn statement, any sealed professional opinions from an expert (P.G. or P.E.), or even an unsworn declaration that suffices in other important or legal proceedings under Texas Civil Practice and Remedies Code § 132.001.

All that Cockrell asserts about the authenticity of its factual assertions is that its general partner Texas Production Company’s CEO represents that the petition is true and correct. Given that Cockrell’s complaints present science-based, technical questions about aquifer conditions, the certification by a senior officer of an affiliated company lacks the credibility and evidentiary foundation to support the petition. The District’s response is sworn to by a person with personal knowledge and supported by a business-records affidavit authenticating the District’s records, many of which include hydrogeologic reports, models, and opinions of professional engineers (P.E.s) and professional geoscientists (P.G.s).

IV. Correction and Clarification of Alleged Facts about Cockrell’s Permits, FSH’s Permits, and the 2017 Settlement

Cockrell misrepresents and omits several facts in its petition, just as it did at the trial court and Court of Appeals. The Court of Appeals’ opinion accurately restates key facts:

(1) the extent of Cockrell’s affected groundwater rights

Cockrell leads TCEQ to believe that the potential impact to Cockrell from FSH’s pumping to supply its export project would be catastrophic. It was adjudged that Cockrell does hold permits “for 16 wells, allowing annual production of 15,528.846 acre-feet of groundwater pumping, for the purposes of supplying water and irrigation requirements for a pecan orchard. Cockrell’s permit allows annual groundwater pumping from three different aquifers: approximately 1,800 acre-feet from the Capitan Reef Aquifer, approximately 7,800 acre-feet from the Rustler

¹⁸ Black’s Law Dictionary West Sixth ed. (1990); *see also* Black’s Law Dictionary Thomson Reuters 12th ed. (2024)(“act of attesting,” which is “to bear witness; testify; to affirm to be true or genuine; ...”).

¹⁹ Justia Legal Dictionary (<https://dictionary.justia.com/certification#:~:text=The%20procedure%20of%20confirming%20the,having%20validity%20or%20credibility%20affirmed>)(accessed on Jan. 30, 2025).

Aquifer, and 5,880 acre-feet from the Edwards-Trinity Aquifer.”²⁰ Interestingly, over the past 15 years, Cockrell’s data shows that it relies on the Edwards-Trinity for 22-43% of its supply. At issue in this docket is the Edwards-Trinity aquifer. As is shown by the evidence (data, the District’s rules, and the District’s implementation of those rules), Cockrell is in a position to rely on multiple sources of supply and the Edwards-Trinity source is not at risk.

- (2) whether there was a sleight-of-hand with FSH’s amended 2009 Application that intentionally eliminated Cockrell’s rights to protest

FSH reduced its requested relief in its original application for 49,000 acre-feet twice, once in September 2009 (to 47,418 acre feet),²¹ and then in 2017 (to 28,400 acre feet).²² Cockrell alleges that this second amendment constituted a new 2017 application, especially when FSH’s contractual partner Republic Water Company of Texas, LLC’s own application for 28,500 [sic] acre feet is considered. The Court of Appeals found otherwise, recognizing that FSH simply reduced its request and further agreed to accept permit conditions that restricted its permit rights,²³ which is typical in many regulatory proceedings, and not a sleight of hand.

Additionally, the following facts should be clarified:

- (1) whether the District capitulated and settled with FSH after being exhausted with FSH’s litigation and lobbying efforts

The District appreciates that Cockrell attaches the 2017 settlement agreement, at its Exhibit 2. That settlement agreement benefits the District and its constituents in a significant way. The District defeated legislation lobbied by FSH to gut the District’s authority to regulate pumping,²⁴ and prevailed in several lawsuits initiated by FSH and its partner Republic, which resulted in recovery of legal fees.²⁵ It was on the heels of these *victories* that *FSH*, not the District, sought

²⁰ *Cockrell Inv. Ptnrs, L.P. v. Middle Pecos Groundwater Conservation Dist., et al.*, 677 S.W.3d 727, 733 (Tex. App.—El Paso 2023), pet. granted.

²¹ *Id.*; Exhibit 7 (District’s Jul. 8, 2011 order and findings of fact and conclusions of law), at Finding 5.

²² Exhibit 14 (FSH’s Amended Application for a Production Permit and Authorizing Export), which is also Cockrell’s Exhibit 3.

²³ *Id.* at 734-36.

²⁴ House Bill 4805, Committee Substitute, by Rep. Craddick (81st Leg., R.S., 2009).

²⁵ The state trial court ordered that legal fees be paid in Cause No. P-7047-83-CV (2015) by FSH and in Cause No. P-11956-112-CV (2016) by Republic. FSH voluntarily dismissed

settlement on terms similar to those proposed by the District in the 2008-09 timeframe. Perhaps more importantly, it was input from the District's important other constituents that motivated settlement. The District sought that input from the other litigants aligned with the District against FSH:

Pecos County, City of Fort Stockton, Pecos County Water Control and Improvement District No. 1, Brewster County Groundwater Conservation District, and the Beard, McKenzie and Ryan Families.

And the District held two publicly noticed town-hall meetings in the Cities of Fort Stockton and Iraan to seek input from the general public.²⁶ Cockrell attended the April 3, 2017 meeting in Fort Stockton, but did not offer comment.²⁷ The feedback from the well-attended meetings was that the public supported the proposed reductions and restrictions on FSH's 2009 application.²⁸

Cockrell has softened its attack of the District in its restated petition compared to its original petition. It is ironic that Cockrell has been aggressive with the District from 2017 to date with litigation and legislative efforts and that it was FSH and Republic who were on the attack in several lawsuits and legislative efforts during the 2010-2017 timeframe. The District understands that it cannot please everyone all the time, though it strives to treat all its local constituents and out-of-District stakeholders with respect and professionalism, to make extensive time for public engagement, and as reflected in its minutes, to undertake considerable and thoughtful public deliberation.²⁹ The District believes that Cockrell is an important constituent and candidly wishes that Cockrell had engaged in the 2004-2012 timeframe to participate in FSH's permit hearings. That was the legal venue the Texas Legislature established for Cockrell to exercise its legal remedies, not several years after the fact. If Cockrell had done so, then we all could have avoided this petition for inquiry, Cockrell's lawsuits, petitions for rulemaking, and lobby efforts.

its federal lawsuit in No. P-10-CV-003 (2010). The District's insurance policies have covered a substantial portion of these fees, and the insurance company has been reimbursed for the fees recovered.

²⁶ Exhibit 15 (notices of Apr. 3, 2017 public forum in Fort Stockton and Apr. 6, 2017 public forum in Iraan).

²⁷ Exhibit 16 (minutes from Apr. 3, 2017 public forum).

²⁸ *Id.*

²⁹ See minutes at <https://www.middlepecosgcd.org/agendas-and-minutes/>.

(2) Cockrell’s proposed rules affect FSH, not Cockrell

Cockrell is not transparent about its proposal to restrict permits. That proposal would only tighten restrictions on *production* permits (such as FSH’s export permit), not Historic and Existing Permits (such as Cockrell’s). As explained in Section VI below, the District’s rules already have a regulatory plan for pro-rata cutbacks for *all* permit holders if necessary to achieve DFCs and responsibly manage groundwater.

(3) whether the District’s *new* model is required to meet the accountability standards in TCEQ Rule 293.23(b)(7) or (8)

The answer is “no,” a *new* model is not required to support the District’s efforts under its rules *to achieve* DFCs *and protect* groundwater within Pecos County. The District meets the Rule 293.(b)(7) and (8) standard without a new model. To the extent models are needed for DFC *development* and other management work, other *existing* models are available, including TWDB’s GAM. Models certainly play a role in regional-scale management, and the District has for years had several *existing* models at its disposal—12 (twelve) existing models, to be exact.³⁰ To achieve DFCs and protect groundwater, the District relies heavily on review and analysis of historic and current data of (1) pumping and (2) water levels to support its day-to-day management and Board deliberations and actions on permitting and policy issues.

Section VI below explains in detail how the District meets *the relevant* question about rules adoption and implementation. Cockrell attempts to divert TCEQ’s attention away from the relevant question by criticizing the District for not having a new model and then citing to an obsolete status report. Cockrell complains that the District “is years late on completing the modeling and technical memoranda that it contends will support the [FSH] special permit conditions, and it now seeks to downplay the importance of the technical memoranda and modeling.” The obsolete status report is Cockrell’s Exhibit 10 (MPGCD’s Model Technical Memoranda dated May 3, 2024), which is nearly 12 months old. The most recent status report dated February 13, 2025 reflects substantial work by the District’s consultants on model inputs regarding groundwater pumping, recharge,

³⁰ Exhibit 17 (Overview of Technical Memoranda (May 3, 2024) by William Hutchison, Ph.D., P.E., P.G. and Michelle Sutherland, P.E., at 3-4).

aquifer parameters, boundary flows, springs, surface water, groundwater evaporation, model runs, and model calibration datasets.³¹

Although the District is working on a new model, new models take years to develop. More importantly, the purpose of the model is *not* to “support the [FSH] special permit conditions.” The letter proposal for a new model (dated June 12, 2019) does not mention the FSH permit or the special permit condition thresholds.³² At its June 18, 2019 Board meeting, the General Manager and consultant Dr. Hutchison briefed the Board on the uses of the model, none of which were to support FSH’s special permit conditions. Rather, the purposes of the model include improving the District’s ability to develop DFCs, management zone delineation, assessment of groundwater monitoring results, provision of quantitative support of rulemaking decisions, and assistance with permitting such as providing an improved quantitative tool for use in developing hydrogeologic reports and the review of permit applications by quantifying impacts on a regional scale.³³ The Board discussed and was briefed on several other benefits, including the ability to integrate data from several existing GAMs due to recent developments and advancements in MODFLOW modeling codes, the utility of a single model for the District that covers all aquifers, and an enhanced tool for assessing the relationship between groundwater pumping and the spring flow at Comanche Springs.

The work on the model continues, as reflected in the District’s February 13, 2025 status report at Exhibit 18. As this work has progressed, there have been updates to the geologic framework of the model. In addition, data provided by Cockrell in 2018 and 2023 on their Belding Farms wells have been analyzed and will be used to strengthen the model calibration. It is notable that these Belding Farms data have not been made available for any of the earlier models of the area. The District has begun releasing for peer review “technical memoranda” detailing model inputs for model grid assumptions and pumping estimates for its new model, as reflected in Cockrell’s own Exhibit 10. It should be noted that TWDB’s own *update* of its existing GAM for the Edwards-Trinity has been underway since

³¹ Exhibit 18 (Technical Memoranda status report (February 13, 2025)).

³² Exhibit 19 (Letter dated Jun. 12, 2019).

³³ Exhibit 20 (Board agenda for meeting held Jun. 18, 2019).

2000,³⁴ and according to TWDB is targeted for completion in 2025³⁵—the point being that it takes years to *update* a model let alone *develop a new* model.

What Cockrell fails to mention in its petition is that a substantial research effort is underway as required by FSH’s special permit condition numbers 13 and 14. Cockrell was “pleasantly surprised to hear about the concept of the study—the science and intent to get a better understanding of the data are great concepts. We are pleased to hear about the funding for these issues.”³⁶ The District’s intent with the study, as underscored by its science team of Dr. Hutchison, P.G., P.E., Allan Standen, P.G. (LRE), Vince Clause (Freese & Nichols), and Michelle Sutherland, P.E. (Envision Water), is “to collect additional data and analysis for assurance of our aquifer level thresholds and cutbacks that were incorporated into the FSH permit.”³⁷ During that public meeting, Cockrell expressed concern about uncertainty of future aquifer conditions based on possible pumping from FSH.³⁸ In its petition, Cockrell relies on Exhibits 5 and 6 to make its point.

Both of these exhibits reflect the work product of Cockrell’s expert, but none are sealed. Nor can the CEO of Cockrell’s affiliated company who certified its petition competently vouch for the truth and accuracy of the technical representations because he is not a licensed geoscientist (P.G.) or engineer (P.E.). Consequently, there is no credible evidence before TCEQ to support Cockrell’s proposition. Nonetheless, the District will address each of these technical exhibits and why Cockrell’s logic is flawed, and its fear of uncertainty is unwarranted. Cockrell Exhibit 5 (“Prison Well Chart reflecting Minimum Recovery/Wet Rock’s Summary of FSH Permit Conditions”) is misleading for two reasons: (1) the chart title suggests that the data show “minimum recovery” when, in fact, the actual data show annual cycles of drawdown and recovery and show long-term recovery from the 1970s to more recent years after the reduction in pumping in the area, and (2) the orange line on the chart (labeled “Prison Well – Adjusted Down” in the

³⁴ Seeking to update its 2004 model, TWDB published its “first phase” Conceptual Model in Aug. 2022, which included various aquifer parameters in support of the groundwater availability model expected to be completed in 2025. See Exhibit 21 (TWDB, A Conceptual Model of Groundwater Flow in the Pecos Valley and Edwards-Trinity (Plateau) Regional Aquifers (Aug. 2022).

³⁵ TWDB’s GAM webpage accessed on Apr. 8, 2025 at https://www.twdb.texas.gov/groundwater/models/gam/eddt_p/eddt_r.asp.

³⁶ Exhibit 22 (Board minutes for Jun. 16, 2020 meeting, at Agenda Item VIII).

³⁷ *Id.*

³⁸ *Id.*

legend) is not based on any model or simulation, but simply a speculative, arbitrary, scientifically unfounded “what-if” scenario where each water level (represented by blue dots) is adjusted downward by about 40 feet. Nor is this exhibit credible because Cockrell purports it to be a professional opinion, but it is not sealed by a professional geoscientist or professional engineer.

As shown in Cockrell Exhibit 5, the blue dots represent the winter groundwater elevation (winter maximum). Note that as the year progresses, groundwater levels drop in response to regional pumping to the summer minimum (depicted as red dots). Please note that, in each year, the groundwater recovers from the summer minimum to the next year’s winter maximum. The amplitude of the cycle (winter maximum to summer minimum) in this specific well is characteristically about 30 to 40 feet. These data show the annual drawdown and recovery cycle each year from the mid-1970s to 2021. It is also observed that the overall trend of the groundwater elevations demonstrates the long-term recovery of relatively low groundwater levels (both winter maxima and summer minima) from the 1970s to more recent years that is attributable to a regional reduction in groundwater pumping. It is notable that the summer minima of recent years is about the same as the winter maxima of the late 1970s.

The orange line in Cockrell Exhibit 5 is labeled “Prison Well – Adjusted Down.” This chart was used for a presentation to the Pecos County Commissioners Court on July 11, 2022. When questioned about the basis of the orange line on the chart, Cockrell representatives acknowledged that it was simply a “what-if” scenario that is not based on any analysis or model simulation. It was developed by simply using the actual data and reducing the groundwater elevation by an arbitrary value (about 40 feet). Thus, the “concern” over the special conditions in the FSH permit is predicated on a chart of a single well where data are arbitrarily adjusted downward to fit the pre-determined conclusion that the special conditions are not “protective of the aquifer.”

Cockrell Exhibit 6 is a poor-quality scan of an undated set of PowerPoint slides, from Wet Rock Groundwater Services, LLC. The material is a mix of factually correct information (specif., the role of the connection between the underlying Rustler Aquifer and the Edwards-Trinity (Plateau) Aquifer and the hydrograph of the Prison Well with the special permit condition thresholds), and factually incorrect information (specif., inferring that the development of the special permit triggers was not documented and implementation of the special permit conditions in terms of measurement protocol are not known). The “asks” in

these slides were to “simplify the monitor well system,” “clarify how triggers are implemented,” and “measure triggers and implement cutbacks monthly/quarterly.”

The monitoring system, as implemented since 2017/2018 consists of 11 wells and each well is equipped with a transducer that collects data every 60 minutes and automatically uploads the data to a server every day. It is unclear from the slide if “simplify” means fewer wells, reduced data collection frequency, or fewer parameters. It is unusual to “ask” for less data collection when a robust system that has been operating for the better part of a decade has been useful to advance overall management objectives of the District and has been collecting a baseline of data to eventually compare to data that will be collected once the FSH export project begins.

The implementation of the threshold triggers is detailed in the FSH settlement document. The establishment of the winter maximum is made on April 1st of each year. The highest measured groundwater level during the winter (December 1 to March 31) is used to establish the winter maximum groundwater elevations. If six of the 11 thresholds are not met, annual pumping reductions are “triggered.”

Cockrell’s final “ask” is to have monthly or quarterly pumping reductions rather than annual reductions based on the winter maxima. Annual reductions provide more regulatory certainty. Also, there is no technical basis in Cockrell Exhibit 6 that explains how implementation of more frequent opportunities to reduce pumping would be implemented and administered. Finally, there is no description of any tangible benefit of more frequent pumping reductions in terms of groundwater management. As noted above, much of the factually incorrect information and conclusory statements that are inconsistent with the data (specif., “once per year cutbacks do not protect the water resource”) have been used by Cockrell for years in an attempt to modify the special permit conditions.

In direct response to Cockrell’s concern during the June 16, 2020 Board meeting, the District’s consultants presented to the Board and noted that the District will “get additional data in place in terms of elevation and conductivity before pumping increases for exportation and develop a baseline. This is an early warning system, and we need a comprehensive data set to address what we can anticipate in terms of interpretive issues. The foundation of this endeavor is to not

let the water levels drop below the historic minimum levels...” “Key Elements of Phases” of this research respond directly to Cockrell’s concerns:

- “✓ Addresses water quality issues raised by MPGCD and Cockrell Investment Partners.
- ✓ Groundwater elevation and water quality data collection efforts equal or exceed those additional data collection efforts proposed by Cockrell Investment Partners.”

Cockrell’s Exhibit 1 to its petition only reinforces the District’s position that FSH’s export-related permit is 28,400 acre feet, which could be reduced to zero, leaving FSH with 19,018 acre feet, *less than not more than* FSH’s recent pumping (as shown in Cockrell’s Exhibit 1.

In summary, a *new* model is *not* required to meet the accountability standards in TCEQ Rule 293.23(b)(7) or (8), which is Cockrell’s primary complaint. As the evidence shows, the District has the rules in place that TCEQ and the Texas Legislature would expect of a district that is responsibly evaluating and managing to achieve DFCs and protection of its local groundwater supply. Beyond and not relevant to the 293.23(b)(7) and (b)(8) inquiry, the evidence shows that the District is *implementing* those rules.

V. District’s Perspective on Cockrell’s Five Lawsuits

There are five lawsuits initiated by Cockrell. The first one that was filed challenges the District’s decisions on FSH’s 2009 production permit application and 2017 application to amend and reduce an existing historic-and-existing use permit:

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)

Statutory and case law set the deadline and legal standard for protesting, exhausting remedies, appealing district decisions, and standing.³⁹ The trial court

³⁹ Tex. Water Code §§ 36.4051(c), 36.415(b); *City of Waco v. Texas Comm’n on Env’tl. Quality* 346 S.W.3d 781, 802 (Tex. App.—Austin 2011), *rev’d on other grounds*, 413 S.W.3d 409 (Tex. 2013).

and Court of Appeals held that Cockrell was several years late in protesting FSH's 2009 application and did not have standing to protest FSH's application to reduce its authorization and give up higher-priority pumping rights under its historic-and-existing use permit.⁴⁰

The other four lawsuits challenge the District's renewals of FSH's production permit in 2020 and 2023:

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)

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)

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

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

The automatic-renewal statute, Texas Water Code § 36.1145, mandates that a district “shall without a hearing renew” a permit if it meets the requirements of that statute, which FSH undisputedly met. To the extent that the export statute, § 36.122, applies, the District is required to “consider the permit in the same manner it would consider any other permit in the district” when renewing the permit [viz., by considering § 36.1146]. The General Manager and Board followed those two statutes and the District's implementing Rule 11.8, which the trial and appellate courts held to be proper by denying Cockrell's attempt to secure a hearing and protest the renewal.⁴¹

⁴⁰ Exhibit 23 (order on pleas to the jurisdiction); *Cockrell I*, 677 S.W.3d at 727.

⁴¹ Exhibit 24 (trial court's final judgment); *Cockrell II*, 676 S.W.3d 677 (Tex. App.—El Paso 2023), pet. granted.

VI. District's Rules Are Designed to Achieve DFCs and Adequately Protect Groundwater in GMAs 3 and 7—and District *Implements Those Rules by Gathering and Analyzing Monitoring Well Data*

The *essential regulatory framework* of the District's rules have changed little since they were adopted under the leadership of the Cockrell pecan farm's chief executive Mr. Honaker. Notably, Mr. Honaker led the District as its Board President through development of its regulatory program and never opposed key votes, such as approval of rules, the management plan, and DFCs. After the District's successful confirmation election, the District adopted initial procedural rules effective January 7, 2004, and initial substantive rules effective August 18, 2004.⁴² Those rules were amended several times over the past 20+ years to implement statutory changes and refine and enhance the District's regulatory program to carry out its management plan and achieve DFCs.⁴³ Cockrell did not voice any concerns about rules at the District from 1999-2017.

As of 2013, upon Mr. Honaker's resignation, the rules provided for well spacing, hydrogeological testing and reports to accompany higher-volume permit applications, production limits, special consideration for pumping within three management zones, enforcement, and development of, monitoring, and achievement of DFCs. Since then, the Board has further strengthened its permitting program and now requires more scientific data and analysis and more detail in describing availability and potential effects on other permit holders. Of particular note, TWDB has recognized the District's data-driven approach. Based on comprehensive research of groundwater districts across Texas, TWDB identifies the District's region as "a best-case scenario" due to its superior agricultural field identification capabilities and monitoring systems.⁴⁴

The District's rules and management plan reflect the District's commitment to its well-monitoring program, as described below. The District implements both its rules and management plan by daily staff site work to conduct once-per-month

⁴² Exhibit 25 (preamble and excerpt of District's rules effective May 18, 2005).

⁴³ Exhibit 26 (current rules effective Dec. 1, 2023); Exhibit 27 (Management Plan approved Jul. 16, 2020, at §§ 5.10, 5.11, and 6.8 (detailing how the District employs data, monitoring, and water-level thresholds in its rules to allow permit conditions and production cutbacks if necessary to achieve DFCs)).

⁴⁴ Exhibit 28 (excerpt of TWDB Final Report: Estimation of Groundwater Pumping Volumes, Locations, and Aquifers for West Texas, TWDB Contract Number 2048302456 (Feb. 28, 2022), at 474).

measurements of nearly 200 monitoring wells and near daily review of the real-time data from transducers permanently installed in several monitoring wells. The Board is briefed monthly on this actual data.

On an ongoing basis and over the years the District has consulted with several licensed scientists, Randy Williams, P.G. (Bar W Consulting), Allan Standen, P.G. (LRE Water), Ron Green, Ph.D., P.E. (Southwest Research Institute), Michelle Sutherland, P.E. (Envision Water), Raymond Straub, P.G. (Straub Corporation), Steven Walthour, P.G. (independent consultant), David Dunn, P.E. (HDR Engineering) Vince Clause, P.G., GISP (Freese & Nichols), and William Hutchison, Ph.D., P.E., P.G., and received information-technology support from Jim Burton, P.E. (EcoKai Environmental), Halff & Associates, and In-Situ (employing HydroVu Data Services). These experts have collaborated and worked to collect and evaluate data and express their professional opinions about the District's regulatory program and management, in close coordination with and under the oversight of the District's General Manager and Board of Directors. The District has also benefited from the input of third parties' consultants.⁴⁵

The results of many of these experts' opinions reflect that water levels—historic and current—show substantial available supply in the Edwards-Trinity aquifer, and no trending toward any impairment of the DFCs.⁴⁶ Cockrell claims that FSH's efforts "to produce and export unprecedented amounts of water in a manner that has never been historically observed and for which there is no data indicating the likely effects on the aquifer" put the aquifer at risk. They characterize the District as "a novice cliff jumper who has elected, without experience, to jump from the highest level and see what happens." Cockrell's statements, aside from their bombast, are incorrect, misleading, and do not accurately reflect the District's extensive reliance on data-driven groundwater management and the District's responses to Cockrell's issues and concerns.

The first DFCs for GMAs 3 and 7 were adopted in 2010 when Mr. Honaker was the District Board's President and have not changed during the GMA updates in 2016 and 2021. It is important to note that Cockrell submitted written comments to GMA 7 on June 4, 2021, and June 15, 2021, and submitted oral comments to GMA 7 on June 15, 2021. The GMA 7 Districts undertook a substantive review and

⁴⁵ See *supra*, 3n.13 and 4n.16.

⁴⁶ See, e.g., Exhibit 29 (District's Oct. 17, 2023 Evaluation of Cockrell's Proposed "Anytime" Thresholds).

provided detailed responses to those comments included in the statutorily required explanatory report.⁴⁷ In response to one comment, the consistency between the DFC and FSH's special permit condition thresholds was demonstrated (Figure 6 of the GMA 7 Explanatory Report).⁴⁸ Another important and relevant element of the District's and GMA 7's responses was the simulation of impacts associated with FSH's export project: shifting 28,400 acre-feet per year of groundwater pumping from a seasonal agricultural pattern to alternative patterns typical of municipal use (Appendix H of the GMA 7 Explanatory Report).⁴⁹ This particular response demonstrates the inaccuracy of Cockrell's assertions that (i) the District has not completed any model simulations of the long-term impacts of the FSH export pumping and (ii) is dead in the water until a new model can be developed.

Another example of the willingness of the District to respond to comments, during the development of DFCs in 2016, relates to FSH. FSH submitted extensive comments that resulted in extensive responses by the District and GMA 7 (see Appendices E, F, and G of the GMA 7 Explanatory Report dated March 26, 2018).⁵⁰ As a result of these comments, the USGS model that had been used by the District was reviewed and found to have severe limitations in terms of predictive simulations and not to be an appropriate tool to develop DFCs or evaluate management zone concepts. Notably, these comments, responses, and actions took place when the FSH litigation and legislative efforts against the District were active, and reflect the District's integrity and open-mindedness to communicating with stakeholders involved in contentious matters.

The District has extensive pumping and water-level data dating back to the 1950s.⁵¹ The source of some of this data is Cockrell itself, as they recorded water-level data dating back decades.⁵² As Dr. Hutchison's recent reports and presentations reflect, he has reviewed and evaluated water pumping and water-level data in the Belding area, which is where Cockrell's pecan farm is located.⁵³

⁴⁷ Exhibit 30 (GMA 7's Explanatory Report (Aug. 28, 2021)).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Exhibit 31 (GMA 7's Explanatory Report (March 26, 2018)).

⁵¹ Exhibit 32 (District data).

⁵² *See id.*

⁵³ *See id.*; see Exhibit 29 (District's Evaluation of Cockrell's "Anytime" Thresholds, William R. Hutchison, Ph.D., P.E., P.G. (Oct. 17, 2023), which is based on District

The data reveals that Cockrell pumped as much as 8,000 acre feet per year from the Edwards-Trinity aquifer when water levels *were lower than* Cockrell's proposed "anytime" thresholds.⁵⁴ Cockrell's stated concerns about inability to pump are not supported by Cockrell's own data.⁵⁵ Cockrell blatantly and wrongly accuses Dr. Hutchison of "conjecture,"⁵⁶ and the District for failing to give Cockrell "any meaningful response" to its concerns,⁵⁷ because the District *has* responded, in writing, in sealed professional reports, and in person during several meetings. For example, Dr. Hutchison's 108-page PowerPoint presentation to the public during the District Board's October 17, 2023 meeting lists the District's voluminous historical and current pumping and water-level data points, evidence of potential errors in Cockrell's data,⁵⁸ and an assessment of Cockrell's proposal to limit pumping in the District's Management Zone 1 based on "anytime" thresholds applied to all production permits rather than the District's current winter-recovery thresholds applicable to FSH.⁵⁹ This oral and written presentation outlines the extensive work of the District to evaluate Cockrell's concerns.⁶⁰ It concludes that, if Cockrell had timely provided its historical data during the 2016-17 timeframe when settlement discussions were underway, the agreed-upon water-level winter thresholds in FSH's permit conditions could have been *less conservative than necessary* to protect the aquifer, and could have delayed the pumping reductions contained in those permit conditions.⁶¹ This data also shows that for decades water levels rebound after substantial pumping.⁶²

Shortly after this October 2023 Board meeting, Cockrell ignored the totality and details of that presentation, and, in December 2023, filed a petition for rulemaking, rehashing the same issues covered at the October meeting and in the above-described October 17, 2023 report.⁶³ The District's Board and General Manager instructed its consultant and law firm to thoroughly review and comment

pumping data (shown in this Evaluation) and a sealed report prepared Dec. 7, 2018 (sealed on Jan. 24, 2025)).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Petition at 4.

⁵⁷ Petition at 4 with accompanying Exhibits 5 and 6 (unsigned, undated presentations).

⁵⁸ Exhibit 29 (District's Oct. 17, 2023 Evaluation of Cockrell's Proposed "Anytime" Thresholds at 9).

⁵⁹ *See generally, id.*

⁶⁰ *See, e.g.,* at 32-58.

⁶¹ *Id.* at 59, 91.

⁶² *See generally id.*

⁶³ Exhibit 33 (Cockrell's first petition for rulemaking).

on each and every subsection of proposed Rule 10.8(a) through (f) of Cockrell’s petition to inform the Board whether its existing rules are deficient and of its options. The “Summary of Cockrell’s Proposed Rule 10.8(a)-(f) and Board Deliberation and General Manager’s Comments during Board Deliberation” and “Review of Petition to Adopt or Modify a District Rule Submitted by Cockrell Investment Partners, LP and Belding Farms” indicate that the proposed Rule 10.8(a)-(f) is not necessary, because the existing rules are sufficiently protective of local groundwater resources.⁶⁴ After a hearing, extensive public comment, and substantive deliberation at its February 20th and March 18th 2024 public meetings, the District’s Board denied that petition and detailed its substantive reasons in the statutorily required Explanation for Denial.⁶⁵

Undeterred, Cockrell filed two more rulemaking petitions. The first petition pressed the District (1) to set export fees by rule in a manner inconsistent with new statutory law, overlooking the hearing requirement for annual increases, and (2) to limit by rule how those export fees can be used, which would be short-sighted and handicap the District from funding a variety of mitigation measures and other purposes authorized in the statute.⁶⁶ Cockrell doubles down in its second petition on its advocacy for a new Rule 10.8, insisting on more restrictive water-level thresholds and mandatory cutbacks when “unreasonable impacts” occur, a new concept that is not consistent with the statutory terms “unreasonable effects” and statutory “impacts” during the DFC-setting process.⁶⁷ The “District’s Comparison of Cockrell’s Proposed Rules to MPGCD’s Current Rules and Policy” illuminate how thoroughly the District vetted Cockrell’s suggestions.⁶⁸ The District Board’s Explanations of Denial are very detailed, substantive, and cover every single proposed rule, and reflect a logical basis for denial.⁶⁹

Cockrell is not satisfied with the District’s responses during the § 36.1025 rulemaking petition proceedings or other public meetings referred to above. Yet

⁶⁴ Exhibit 34 (Summary of Cockrell’s Proposed Rule 10.8(a)-(f) and Board Deliberation and General Manager’s Comments during Board Deliberation); Exhibit 35 (Review of Petition to Adopt or Modify a District Rule Submitted by Cockrell Investment Partners, LP and Belding Farms).

⁶⁵ Exhibit 36 (Explanation for Denial of Cockrell’s first petition).

⁶⁶ Exhibit 37 (Cockrell’s second petition for rulemaking). The new statutory law was enacted in 2023. See Texas Water Code §§ 36.122(e-3) and 36.207(a) and (b).

⁶⁷ Exhibit 38 (Cockrell’s third petition for rulemaking).

⁶⁸ Exhibit 39 (District’s Comparison of Cockrell’s Proposed Rules to MPGCD’s Current Rules and Policy).

⁶⁹ Exhibit 40 (Explanations for Denial of Cockrell’s second and third petitions).

Cockrell has not provided any credible reply to the District's voluminous written responses in its initial petition for inquiry or this restated petition for inquiry. **Not to lose sight of the forest for the trees, this back-and-forth disagreement about technical and policy issues does not present a reason for tying up state and local government resources under the § 36.3011 petition-for-inquiry process.** If that is the direction this is headed and that is the direction and guidance that would be given to a review panel, it is likely that a review panel would be overwhelmed with evidence and argument from not only Cockrell on the one hand but, on the other hand, FSH, the Cities of Abilene, Midland, San Angelo, and Fort Stockton, and the District and numerous other local permit holders, stakeholders, and the 20+ districts within GMAs 3 and 7. If the guidance to the review panel were to be whether rules are in place and whether they are designed to achieve DFCs and protect groundwater, the required hearings would be wasteful of all participants' efforts and expense.

What is relevant is that rules are in place designed to empower the District to proactively address changing aquifer conditions, which more than adequately protect groundwater within the District in GMAs 3 and 7. A section-by-section review of key rules follows:

Section 10 (Production Limitations)

First, accountability for individual well owners' pumping data has evolved from honor-system reporting 20+ years ago to required alternative-measuring methods to substantially more mandatory metering. See Rule 10.7. Section 11 of the rules allows permit conditions to be imposed or agreed upon, which over the past few years has resulted in more mandatory metering. On top of metering and alternative measuring methods is annual reporting for all permit holders except those who have been required to provide monthly metering under Rule 10.7(d).

Rule 10.2 (Production Permits) and Rule 10.3 (Aquifer-Based Production Limits) specify the District's authority to restrict pumping post-permit issuance to avoid impairment of DFCs, and in great detail describes the District's commitment to study water levels, water quality, groundwater withdrawals, annual recharge, and the loss of stored water in the aquifer on an ongoing basis to:

determine what quantity of proportional adjustment reductions to the amount of permitted production of groundwater are necessary to

avoid impairment of the Desired Future Conditions of any of the various aquifers within the District.

This rule at subsection (b) provides for development of a Demand Management Plan after notice and hearing. Subsection (c) implements the statutory authority in § 36.1146 for a District to initiate a permit amendment:

to modify a permit if data from monitoring wells within the source aquifer or other evidence reflects conditions such as but not limited to an unacceptable level of decline in water quality of the aquifer, or as may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence, or to avoid impairment of the Desired Future Conditions of any of the various aquifers within the District. If the Board has an interest in modifying a permit under this rule, it must provide notice and an opportunity for hearing pursuant to Section 11 of the District's rules.

Whether or not permitted authorized exceed the Modeled Available Groundwater volume, subsection (d) covers proportional reductions "if necessary to avoid impairment of Desired Future Conditions."

Rule 10.4 (Proportional Adjustment) provides a methodology to reduce production and historic-and-existing use permits.

Rule 10.5 implements the District's authority under § 36.116(d) by establishing three "management zones" where conditions in and/or use of the aquifer differs substantially from one geographic area within the District to another. Cockrell's property is wholly contained within Management Zone 1 under Rule 10.5(a)(1). This several-page, highly technical rule establishes water-level benchmarks in 2010 for future comparison and as a mechanism for DFC-based thresholds of acceptable drawdown, relying in part on TWDB GAM Task Report 10-033.⁷⁰ Subsections (f) and (g) of this rule provide the enforcement protocol for proportional adjustments within these management zones.

Finally, Rule 10.6 (Limit Specified in Permit) makes clear that permits may be issued subject to conditions and restrictions placed on the rate and amount of

⁷⁰ Exhibit 11 (TWDB GAM Task Report 10-033)(Jan. 3, 2011).

withdrawal, including post-permit issuance in accordance with § 36.1146 and Section 11 of the rules.

Section 11 (Permitting)

The District's informational requirements for a permit application to be administratively complete are robust. Rules 11.9.1, 11.9.2, and 11.9.3 require detailed technical information, and hydrogeological reports must be submitted for applications seeking 1,000 acre feet per year or more or an amendment to increase by 250 acre feet per year. The several-page specific-capacity pump-testing and analytical and reporting requirements ensure that the District's General Manager, hydrogeologists, and Board are well-informed when recommending and making decisions on permit applications.

FSH is the most restricted permit ever issued by the District. What was applied for initially was 49,000 acre-feet, and with no proposed pumping restrictions. Consistent with the District's rules in Section 11, the applicant, party-protestants, General Manager, and District's Board ultimately settled upon a permit reduced to 28,400 acre feet, with 15 (fifteen) special permit conditions, and a commitment to give up historic-and-existing use protection granted in 2005.⁷¹ These 15 permit conditions are further evidence of the District's implementation of its rules to manage groundwater and achieve DFCs, as those conditions commit FSH to accountability and the expenditure of substantial effort and financial resources to conduct a study to proactively assess how water-level conditions could and will be affected by FSH's proposed pumping, and agreeing to further reductions—down to zero, if warranted.

Cockrell had a right to protest and engage in FSH's historic-and-existing use permit hearing in 2005, which was uncontested, as well as FSH's production permit hearing in 2010-2011, but did not. It cannot by this petition for inquiry challenge the insufficiency of a comprehensive regulatory program that defines how FSH pumps under a permit it applied for 16 years ago, litigated, and settled with the party-protestants in 2017. Even post-permit issuance the District clearly has rules expressly designed to achieve DFCs and responsibly manage groundwater.

⁷¹ Exhibit 41 (FSH's Production Permit).

Section 15 (Enforcement)

The District's investigation-and-enforcement program under Section 15 of the rules has proven effective. In accordance with Rules 15.1 and 15.2, the District's staff is daily in the field taking measurements from monitoring wells and conducting site inspections. If a well owner is noncompliant by failing to register or permit a well or file a report, the District typically works with the well owner to immediately come into compliance. In the few rare occasions when a well owner or well driller has been a bad actor, the District has moved swiftly to issue notice, conduct a show-cause hearing, issue an enforcement order, and sue to enforce.⁷² See Rule 15.3.

Section 17 (DFCs)

Rules 17.1-17.6 reveal that the District handles DFC compliance as required by the statutory requirements in Texas Water Code § 36.108, et seq. Achieving DFCs is part of the daily, monthly, annual, and ongoing work conducted in the District's office and in collaboration with the Designated Representatives of GMAs 3 and 7. The General Manager's 2022, 2023 and 2024 Annual Reports⁷³ reflect the level of inquiry and inspection that is undertaken to monitor District-wide water levels based on baselines and to implement the District's Management Plan.⁷⁴

With all these rules in place that clearly meet TCEQ Rule 293.23(b)(3), (7) and (8), *why is Cockrell complaining that there are no rules or insufficient rules?* It is certainly inappropriate and irrelevant under the standard of review for Cockrell to burden the Commission, District and other affected persons by essentially urging the Commission to enter an order that would result in adoption of Cockrell's approach to rules.

CONCLUSION

It is a misread of the statute (§ 36.1025) and TCEQ rule (§ 293.23) for Cockrell to advocate that it can *affect local permitting and policy decisions* by decree of TCEQ. That statute and rule were enacted to create a mechanism for

⁷² See, e.g., *District v. Acosta Drilling*, Cause No. P-7196-83-CV (83rd Jud. Dist., Pecos Cty. Dist. Court) (defendant violator paid the full civil penalty, court costs and legal fees, then the case was dismissed).

⁷³ See generally, Exhibit 42 (2022 Annual Report, 2023 Annual Report, 2024 Annual Report).

⁷⁴ See, e.g., Exhibit 43 (District's 2020 Management Plan) at ¶¶ 5.10, 5.11, and 6.8.

TCEQ to ensure accountability: that districts are doing their job by carrying out their statutory mandate. The remedies under this statute and rule—dissolving the District, dissolving the District’s board, appointing a receiver, or entering an enforcement order—make clear that the review-panel process is designed to address districts that appear facially in a petition to have been negligent so that the panel can recommend the best remedy to improve a woefully deficient approach to groundwater management. It is not designed to target districts that have robust regulatory programs that are (i) developed with substantial public input, (ii) based on extensive scientific research and expert opinions, (iii) improved upon over time, (iv) well-funded, and (v) implemented by a board of directors that meets regularly (monthly) and by a staff and consulting team with depth of experience. It is an abuse of this regulatory process to burden TCEQ, the Middle Pecos GCD, and many other governmental and private “affected persons” that are having to react to and address Cockrell’s three (3) purported reasons to undertake a several-month, time-intensive, costly review process.

The District takes pride in its commitment to responsible conservation of groundwater resources. The District has remained transparent, legally compliant, and data-driven in its groundwater management approach, and has sought public input and relied on scientific data to make informed decisions. In the local region, the District plays a leadership role and is actively engaged with Region F Regional Water Supply Group planning and GMAs 3 and 7 planning—its General Manager is an appointed, voting member of all three and is Administrator of GMA 3.

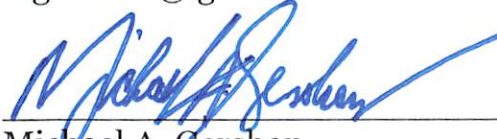
While Cockrell has the right to voice concerns, it is important to recognize that the District’s decision-making process has been thorough, fair, and in full compliance with state regulations. Having been sued by Fort Stockton Holdings, Republic Water, and Cockrell over a dozen times, the District has won every lawsuit heard in the trial court and Court of Appeals. The record reflects that the allegations presented by Cockrell do not withstand scrutiny when examined in detail. Cockrell’s shotgun approach to complaining about *irrelevant issues*—modeling and its three petitions for rulemaking filed under § 36.1025—underscores that it does not have evidence supporting its criticism of the District’s rules under the standard governing this docket under § 36.3011.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the District respectfully requests that the Commission dismiss Cockrell's petition for inquiry.

Respectfully submitted,

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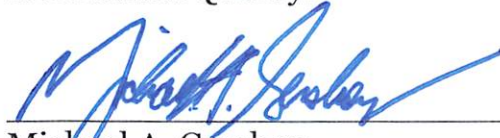


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Certificate of Service

I hereby certify that on this 8th day of April, 2025, a true and correct copy of the foregoing document was e-filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality and served on the designated representatives of record listed on the attached service list, in accordance with the rules of the Texas Commission on Environmental Quality.



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Middle Pecos GCD's Exhibits

NUMBER	DESCRIPTION
1	Middle Pecos GCD Board of Directors' Resolution
2	Middle Pecos GCD General Manager's Affidavit
3	Middle Pecos GCD Bylaws and Rules (September 27, 2000)
4	Minutes of March 27, 2000 Pecos County Commissioners Court Meeting
5	Minutes of February 19, 2013 Middle Pecos GCD Board of Directors Meeting
6	Minutes of May 19, 2020 and June 16, 2020 Middle Pecos GCD Board of Directors Meeting
7	Middle Pecos GCD Order and Written Findings of Fact and Conclusions of Law (July 8, 2011)
8	Notice of April 28, 2009 House Natural Resources Committee Hearing on HB 4805 (81R)
9	Notice of September 20, 2016 House Natural Resources Subcommittee on Special Water Districts hearing in Fort Stockton
10	Notice and Minutes of April 3, 2017 public forum in Fort Stockton and April 6, 2017 public forum in Iraan
11	Texas Water Development Board GAM Task Report 10-033 (January 2011)
12	U.S. Geological Survey, A Conceptual Hydrogeologic Model for the Hydrogeologic Framework, Geochemistry, and Groundwater-Flow System of the Edwards-Trinity and Related Aquifers in the Pecos County Region, Texas (May 2013)
13	U.S. Geological Survey, Data Collection and Compilation for a Geodatabase of Groundwater, Surface-Water, Water-Quality, Geophysical and Geologic Data, Pecos County Region, Texas, 1930-2011 (2011)
14	Fort Stockton Holdings, L.P.'s Amended Application for Production Permit and Authorizing Export
15	Notice of April 3, 2017 public forum in Fort Stockton and April 6, 2017 Public forum in Iraan
16	Minutes from the April 3, 2017 public forum in Fort Stockton
17	Overview of Technical Memoranda, prepared by William R. Hutchison, Ph.D., P.E., P.G. and Michelle A. Sutherland, P.E, dated May 3, 2024
18	Technical Memoranda status report (February 13, 2025)
19	Letter proposal dated June 12, 2019
20	Agenda for June 18, 2019 Middle Pecos GCD Board of Directors Meeting

21	Texas Water Development Board, A Conceptual Model of Groundwater Flow in the Pecos Valley and Edwards-Trinity (Plateau) Regional Aquifers (August 2022)
22	Minutes of June 16, 2020 meeting at Agenda Item VIII
23	Order on Pleas to the Jurisdiction, Cause No. P-12176-112-CV, 112 th Judicial District, Pecos County, Texas (Cockrell 1)
24	Final Judgment, Cause No. P-8277-83-CV, 83 rd Judicial District, Pecos County, Texas (Cockrell 2)
25	Excerpt of Middle Pecos GCD Rules, effective May 18, 2005
26	Middle Pecos GCD District Rules, effective December 1, 2023
27	Middle Pecos GCD Management Plan, approved July 16, 2020
28	Texas Water Development Board, Final Report: Estimation of Groundwater Pumping Volumes, Location and Aquifers for West Texas (February 28, 2022)(Excerpt)
29	Evaluation of Cockrell’s “Anytime” Thresholds, William R. Hutchison, Ph.D., P.E., P.G. (October 17, 2023)
30	GMA 7 Explanatory Report, Edward-Trinity (Plateau), Pecos Valley and Trinity Aquifers (August 28, 2021)
31	GMA 7 Explanatory Report, Edward-Trinity (Plateau), Pecos Valley and Trinity Aquifers (March 26, 2018)
32	Review of Belding Farms Database, prepared by William R. Hutchison, Ph.D., P.E., P.G., January 24, 2025, and Water Level Data
33	Cockrell Investment Partners, L.P. and Belding Farms’ First Petition for Rulemaking (December 18, 2023)
34	Summary of Cockrell’s Proposed Rule 10.8(a)-(f) and Board Deliberation and General Manager’s Comments during Board Deliberation (March 2024)
35	Review of Petition to Adopt or Modify a District Rule Submitted By Cockrell Investment Partners, LP and Belding Farms (March 11, 2024)
36	Explanation for Denial of Cockrell’s First Petition for Rulemaking (March 2024)
37	Cockrell Investment Partners, L.P.’s Second Petition for Rulemaking (August 18, 2024)
38	Cockrell Investment Partners, L.P.’s Third Petition for Rulemaking (August 18, 2024)
39	Middle Pecos GCD’s Comparison of Cockrell’s Proposed Rules to MPGCD’s Current Rules and Policy (October 2024)
40	Explanation for Denial of Cockrell’s second and third Petitions for Rulemaking (October 2024)
41	Fort Stockton Holdings, LLC’s Production Permit
42	Middle Pecos GCD’s 2022 Annual Report, 2023 Annual Report, and 2024 Annual Report

43	Middle Pecos GCD's Management Plan (2020)
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Middle Pecos GCD Exhibit 1

Middle Pecos GCD Board of Directors' Resolution

**RESOLUTION
OF THE BOARD OF DIRECTORS OF THE
MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT
MEETING HELD JANUARY 21, 2025**

A RESOLUTION REGARDING PETITION FOR INQUIRY

WHEREAS, the Board of Directors of the Middle Pecos Groundwater Conservation District (the “District”), upon proper notice, was briefed and took public comment under Agenda Item XII on its agenda, and understands that Cockrell Investment Partners, L.P. (“Cockrell”) filed a Petition for Inquiry pursuant to Texas Water Code § 36.3011, complaining that the District has failed to adopt rules, and that any rules that may have been adopted are not designed to achieve desired future conditions and do not adequately protect groundwater in the management areas;

WHEREAS, the statutory relief sought by Cockrell is comprehensive, as set forth in Texas Water Code §§ 36.3011 and 36.303:

- (1) TCEQ orders the District to take certain actions or refrain from taking certain actions;
- (2) TCEQ dissolves the District’s Board and calls an election to elect a new Board;
- (3) TCEQ requests the Texas Attorney General to appoint a receiver to collect the District’s assets and carry on its business;
- (4) TCEQ dissolves the District; or
- (5) TCEQ recommends that the Texas Legislature take action to accomplish comprehensive management in the District.

WHEREAS, the District’s Board was further briefed that all districts within Groundwater Management Areas 3 and 7 received statutorily required notice of this petition, and that dozens of representatives of districts across the state, Texas Commission on Environmental Quality, Texas Water Development Board, and Texas Department of Licensing and Regulation, and legislative, hydrogeological, and legal professionals were made aware of Cockrell’s petition during Texas Alliance of Groundwater Districts’ Winter Speaker Series and Business Meeting held last week, January 15-16, 2025;

WHEREAS, the District’s Board deliberated in public session and observed that Cockrell’s petition was unwarranted and clearly an intent to collaterally attack Fort Stockton Holdings, L.P.’s permit and contractual arrangement with the Cities of Abilene, Midland and San Angelo, and to reurge its three petitions for rulemaking that the Board had substantial basis for denying;

WHEREAS, the District’s Board recognized the gravity of the allegations and request for relief in the petition, and took action to direct its Board President and Vice President and General Manager to prepare a substantive response, and to memorialize the Board’s strong support in opposition to the petition, by this resolution.

NOW THEREFORE BE IT RESOLVED THAT:

- (1) The above recitals are true and correctly reflect the Board’s position on Cockrell’s petition.
- (2) The Board’s officers, General Manager, and legal counsel are further authorized to take any and all action necessary to implement this resolution.

AND IT IS SO ORDERED.

Upon motion duly made by Director Alvaro Mandujano, Jr., and seconded by Director Puja Boinpally, and upon discussion, the Board voted 8 in favor and — opposed, — abstained, and 3 absent, and the motion thereby PASSED on this 21st day of January, 2025.

MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT

by: Jerry McGuairt
Jerry McGuairt, Board President

ATTEST:

by: Janet Groth
Janet Groth, Board Vice President

Middle Pecos GCD Exhibit 2

Middle Pecos GCD General Manager Ty Edwards' Affidavit

TCEQ DOCKET NO. 2025-0373-MIS

**RESTATED PETITION FOR
INQUIRY SUBMITTED BY
COCKRELL INVESTMENT
PARTNERS, L.P.
FOR REVIEW OF MIDDLE
PECOS GROUNDWATER
CONSERVATION DISTRICT**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**MIDDLE PECOS GROUNDWATER CONSERVATION DISTRICT
GENERAL MANAGER TY EDWARDS' AFFIDAVIT**

BEFORE ME, the undersigned authority, on this day personally appeared Ty Edwards, who, being by me duly sworn, deposed as follows:

1. “My name is Ty Edwards. I am over the age of eighteen (18) years, have never been convicted of a felony or a crime of moral turpitude, and am of sound mind and competent to make this affidavit. I have personal knowledge of the facts contained herein, and the facts are true and correct. Where certain facts and representations are of a highly technical nature, I understand and agree with them, and have relied on the expert opinions of licensed hydrogeologists and engineers who are engaged by the Middle Pecos Groundwater Conservation District—what I’ll call the District—they work with me on a daily basis and contribute to my work.

2. I am the General Manager of the District, a position I have held for over eight years, since January 2017. I was first hired by the District over 11 years ago in mid-December, 2013. I was initially hired by the former General Manager, Paul Weatherby, to serve as Assistant General Manager – there was an understanding that I had an opportunity to be trained and mentored and to step in to the General Manager position when Mr. Weatherby retired. Once he retired effective December 31, 2017, the Board took action to promote me to General Manager. I was born and raised on a ranch in Pecos County. Prior to my work at the District, I worked for several years with a local water well drilling company and became very experienced with the geology and aquifers within Pecos County, with Texas Department of Licensing and Regulation standards for well drilling, and with the role of the District.

3. I’m personally very involved with regional water planning and have been serving for several years as an appointed representative and voting member of the 32-county Region F Regional Water Planning Group. The work we do at Region F’s group is related to the work by the designated representatives and

voting members within the Groundwater Management Areas – or GMAs. I am very familiar with both processes and involved with leadership in not only Region F, but both GMAs 3 and 7 that cover my District's boundaries. I make all meetings of Region F's planning group. We adopted the fifth 5-year plan in late 2020 and, as required by Senate Bills 1 and 2, are busy in this sixth cycle and our about to conduct a hearing on our next 5-year plan so that we can timely approve and submit it to the Texas Water Development Board.

4. In GMA 3, I serve as the Administrator and designated voting District Representative for my District. In this role, I take the lead with responsibility for coordinating, providing notices for, and running our GMA 3 joint planning meetings, and work closely with our consultant, Dr. Bill Hutchison, P.E., P.G. Our GMA 3 covers portions of six counties and the boundaries of two groundwater districts – including the southwest and north central portion of my District's boundaries. The remaining portion of our District is in GMA 7, which covers portions of 33 counties and the boundaries of 20 groundwater districts. I am the designated voting District Representative for my District in GMA 7, and coordinate closely with the Administrator and Dr. Hutchison who is also the lead consultant in that GMA. I attend all the GMA 3 and 7 meetings. Like with the regional planning groups, GMAs run in five-year cycles—we're in our fourth round of joint planning and on target in both GMAs 3 and 7 to meet our statutory deadlines of May 2026 for proposed DFCs and January 2027 for final DFCs.

5. There are several documents attached to my affidavit. I would like to confirm that they are authentic, and by this affidavit am doing so: I am familiar with the manner in which those records are created and maintained at the District given my duties and responsibilities as the District's General Manager. The attached business records were either created by the District or have been filed with or otherwise submitted to the District – we consider these documents to be public information and records of the District. It is the regular practice of the District to make these types of records at or near the time of each act, event, condition, or opinion set forth in each record, and it is the regular practice of the District for these types of records to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them. These business records have been kept by the District in the regular course of business, in accordance with the Texas Public Information Act and the Local Government Records Act, and are attached to my affidavit as exact duplicates of the original."

Further affiant sayeth not.

SIGNED on this 7th day of April, 2025.



Ty Edwards, General Manager
Middle Pecos Groundwater
Conservation District

STATE OF TEXAS

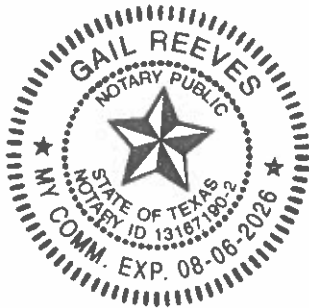
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COUNTY OF PECOS

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SUBSCRIBED AND SWORN TO BEFORE ME on this 7th day of April, 2025.



Notary Public, State of Texas