

MIDDLE PECOS

Groundwater Conservation District

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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.

