

BELDING FARMS, LLC
705 S. FM 2037
FORT STOCKTON, TEXAS 79735-9475
(432) 395-2460
FAX (432) 395-2909

April 12, 2022

Ms. Jennifer Jones
Executive Director
Sunset Advisory Commission
Attn: TWDB and SWIFT
P.O. Box 13066
Austin, Texas 78711

Re: Comments regarding the Texas Water Development Board Sunset Review

Dear Ms. Jones,

Belding Farms and its owner, Cockrell Investment Partners, L.P., in the spirit of and commitment to statewide sustainable, accurate, and honest water planning and water management, appreciate the opportunity to have reviewed the Texas Water Development Board's (TWDB) self-evaluation report and the Sunset staff 's report and recommendations.

We welcome the opportunity to submit comments directly to the Sunset Commission Members and respectfully ask that this letter be shared with the Commission Members.

At previous hearings of the Senate Water, Agriculture and Rural Affairs Committee, Chairman Perry has expressed the need to have and rely on "honest planning". That is, that our assumptions of surface and in this instance groundwater availability are as accurate as possible and that the amount of water we are counting on over the planning horizon will be there in the coming decades. Belding Farms shares this view which informs our comments and concerns.

In keeping with staff's findings and recommendation, we concur with the finding that the TWDB:

- Has become a large infrastructure bank – and has responded to new funding challenges assigned to the agency by the Legislature in a commendable manner.
- Will benefit from risk-based review of projects which otherwise would drive up project costs.
- Should undertake a rule review process to identify outdated rules for elimination or amendment to address new and pressing realities.

Belding Farms strongly supports the commendable efforts of the TWDB, as recognized by the Sunset staff's report. We would however like to point out areas within the same findings that staff identified that merit significant consideration and action as part of the Sunset reauthorization process. Our points can be summarized as:

- While the agency has in fact become a large infrastructure bank, its equal purpose for existence, and to benefit Texans, is to serve as the premier water science agency for the state and to advance reliable, dependable, and honest water planning efforts.
- A deeper review of the inextricable link that exists between science, planning and funding is warranted – which speaks directly to risk-based review and decision making.

We also welcome the fact that both the House and the Senate have identified interim charges that speak directly to our concerns and recommendations. Our concerns and recommendations are rooted in our 7-decades long investment in, ownership of, and reliance on groundwater in the Fort Stockton/Pecos County area for our commercial pecan orchard, which we endeavor to operate in a sustainable fashion.

Belding Farms is located at 705 S. FM 2037, Fort Stockton, TX 79735. The farm consists of 6,500 acres – 2,205 planted acres – and is served by 13 irrigation wells completed in the Edwards-Trinity aquifer, Rustler aquifer, and Capitan Reef aquifer. We are one of the few groundwater users in the area who have diversified pumping across all three available aquifers. We are also one of the only water users in Pecos County to meter every production well we operate, a practice that has been in place since 1984. The aquifers under our farm fall within the jurisdiction of the Middle Pecos Groundwater Conservation District (MPGCD). Our permits are classified by the MPGCD as Historic and Existing Use permits.

Belding Farms is wholeheartedly committed to protecting our water sources. We have implemented various water conservation practices which include irrigation in level basins, water conveyance systems that are either concrete lined canals or underground pipelines, soil moisture measurements to better plan and schedule irrigation, and capture of detailed water well measurements and production data.

We have actively participated with the MPGCD as well as with the Groundwater Management Area 7 (GMA) as it relates to the management of groundwater.

Concerns:

As you are aware, the development of Desired Future Conditions (DFCs) by the Groundwater Conservations Districts (GCDs) and GMAs intersects the jurisdiction of the TWDB – not only in the acceptance of the DFCs – but also in the development of Modeled Available Groundwater (MAG) volumes by the TWDB. These actions then inform in large part, another significant action and responsibility of the TWDB – water planning. Water planning subsequently identifies and informs needed actions as it relates to the development of water management strategies that should mitigate future unmet water needs. The TWDB can and does fund much of the water management strategy implementation.

Our principal concern with the process is that the TWDB currently lacks oversight and authority to review and verify the submitted DFCs. The troublesome process is broken down as follows:

1. GCDs are charged by statute to develop DFCs (TWC §36.108). As part of that process, GCDs are required to consider 9 criteria¹. How well or poorly these considerations are incorporated in the development of the DFCs by the various GCDs can and does lead to erroneous DFCs.
2. TWDB is forced to accept the DFCs adopted by the GCDs and GMAs. The TWDB lacks authority to actively verify the strength of the DFC process, which can allow erroneous DFCs to inform the planning process.
3. Poorly defined and supported DFCs lead to inaccurate MAG development by the TWDB.
4. Poorly developed DFCs and MAG inaccurately inform groundwater management regulatory decisions and management plans.
5. Poorly developed DFCs and MAG inaccurately inform regional water planning.
6. Poorly developed DFCs and MAG inaccurately inform the TWDB's required review and approval of GCD management plans.
7. Poorly developed DFCs and MAG inaccurately inform funding considerations by the TWDB, specifically with respect to funding water strategies that could inadvertently create new unmet needs. This only serves to increase funding needed for additional water management strategies, thereby increasing the state's costs, which ultimately may get passed on to all Texans.
8. Ultimately, MAG development, water management and planning strategies, and funding decisions of water projects can be based on inaccurate DFCs. This jeopardizes the property rights of groundwater users, like Belding Farms, and increases the cost of water planning and project development to the state.

Our concerns are rooted in the recognition that the current DFC development process within various GCDs is not based on scientifically sound and meaningful review or application of the nine criteria outlined in the Texas Water Code. This represents a risk to existing users of groundwater, future generations and to the development of new projects that will rely on groundwater under the jurisdiction of a given GCD or GMA. This is an order of magnitude risk, above the risk-based findings and recommendation within the Sunset staff's report that the Legislature should recognize and correct. Our concerns, while noted firsthand by Belding Farms at the GMA 7 level, are also occurring in many other areas of the state.

Recommendations:

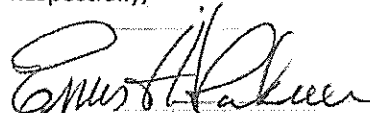
We find agreement, in part, and support for the TWDB's self-identified **major issue** regarding DFCs. While we agree with the agency, we feel that greater efficiency and effectiveness in the development of and adherence or reliance on the DFCs and subsequent MAG and permitting decisions can only come by:

1. Clarifying and strengthening the authority that the TWDB has in conducting a meaningful review of the GCDs considerations of the 9 criteria set forth in TWC §36.108 as it relates to the development of the DFCs.
2. Clarifying the relevance that the DFCs and MAG should, but currently do not have, in permitting decisions by GCDs, including a process for heightened review of permitting decisions that exceed the MAG.
3. Authorizing the agency to withhold acceptance of water management strategies in planning or funding efforts that are supported by DFCs not meaningfully informed by the required statutory criteria or which are likely to cause new unmet needs.
4. Additionally, the state of Texas, as all other states, stands to gain significant benefits if funding from the Bipartisan Infrastructure Law (BIL or IIJA) dedicated to water infrastructure is allocated in a manner that also remedies the above noted risks and concerns. Belding Farms recognizes the aquifers are infrastructure. As such, their development and use deserve the same risk-mitigation review and care granted to other infrastructure projects. This includes decisions that are based on scientifically sound and regulatorily compliant processes. As such, Belding Farms supports allocation of some of the BIL/IIJA funds towards development of science-based model enhancements and corresponding processes that add resiliency and sustainability to our sources of water.

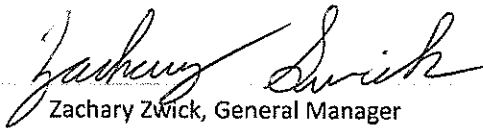
Failure to adopt these recommendations continues to jeopardize private property rights and future availability and reliability of groundwater. Inability by the TWDB to conduct a meaningful technical review of submitted DFCs fails to promote honest water planning in as much as the DFCs inform planning. Poor or less than honest planning increase risk that the agency will have to fund more water strategies and/or may find itself funding projects that due to improper science review and verification may end up creating new unmet needs in the area of origin.

For these reasons we find agreement in part with the Sunset staff report and findings. However, we encourage the Sunset Commission Members to undertake appropriate legislative action to correct the noted deficiencies and risks in the current DFC, planning, management and funding programs and decisions.

Respectfully,



Ernest H. Cockrell, Chairman
Cockrell Investment Partners, LP.



Zachary Zwick, General Manager
Belding Farms

Cc: Mr. Darren McDivitt, TWDB Sunset Review Project Manager

-
- ¹ 36.108 (d) ... Before voting on the proposed desired future conditions of the aquifers under Subsection (d-2), the districts shall consider:
- (1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;
 - (2) the water supply needs and water management strategies included in the state water plan;
 - (3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;
 - (4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;
 - (5) the impact on subsidence;
 - (6) socioeconomic impacts reasonably expected to occur;
 - (7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;
 - (8) the feasibility of achieving the desired future condition; and
 - (9) any other information relevant to the specific desired future conditions.