



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 10, 2019

The Honorable Bob Hall  
Chair, Committee on Agriculture  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Opinion No. KP-0247

Re: Whether a groundwater conservation district may define “agricultural crop” as “food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed” and “utilize that definition to determine the applicable fee rate for ‘irrigating agricultural crops’” (RQ-0274-KP)

Dear Senator Hall:

You ask about the authority of a groundwater conservation district to define the term “agricultural crop” for the purpose of determining the applicable fee rate for “irrigating agricultural crops.”<sup>1</sup> *See* TEX. SPEC. DIST. CODE § 8866.151(b)(1). Chapter 8866 of the Special District Local Laws Code establishes the Mid-East Texas Groundwater Conservation District (“Mid-East” or “the District”). *See id.* §§ 8866.001–.152.

Section 8866.151 authorizes Mid-East to adopt a rule to impose a reasonable fee on wells for which it has issued a permit. *Id.* § 8866.151(a). The District may base the fee on column pipe size or “the actual, authorized, or anticipated amount of water to be withdrawn from the well.” *Id.* § 8866.151(a)(1)–(2). The Legislature capped the fees according to the water’s use:

Fees may not exceed:

- (1) 25 cents per acre-foot for water used for irrigating agricultural crops; or
- (2) 17 cents per thousand gallons for water used for any other purpose.

*Id.* § 8866.151(b)(1)–(2). You state that the 17 cents per thousand gallons roughly equates to \$55.42 per acre-foot. Request Letter at 2. In its rules, Mid-East defined the term “agricultural

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<sup>1</sup>*See* Letter from Honorable Bob Hall, Chair, Senate Comm. on Agric., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Feb. 14, 2019), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinions-rqs> (“Request Letter”).

crop” to mean “food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed,” thereby excluding irrigation for any other purpose from the lower rate for irrigating agricultural crops.<sup>2</sup> You inform us that the owner of a turf farm who obtained a drilling and production permit from Mid-East objects to the District’s definition of agricultural crop, arguing that groundwater withdrawn to water turf may be assessed only at the rate applicable to agricultural crops. *Id.* You ask therefore “[w]hether a groundwater conservation district has the authority to define, by rule, an ‘agricultural crop’ as ‘food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed’ and utilize that definition to determine the applicable fee rate for ‘irrigating agricultural crops.’” *Id.* at 1.

Mid-East’s enabling statute gives it the “powers . . . and duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution.” TEX. SPEC. DIST. CODE § 8866.101; *see* TEX. CONST. art. XVI, § 59(b) (granting conservation and reclamation districts “the authority to exercise such rights, privileges and functions . . . as may be conferred by law”). A groundwater conservation district is a legislatively created political subdivision. TEX. WATER CODE § 36.001(15). Its powers are “limited by the terms of applicable statutes authorizing its creation and a district can exercise no authority that the Legislature has not clearly granted.” *So. Plains Lamesa R.R., Ltd. v. High Plains Underground Water Conservation Dist.*, 52 S.W.3d 770, 776 (Tex. App.—Amarillo 2001, no pet.) (citing *Tri-City Fresh Water Supply Dist. v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940)).

Neither chapter 36 of the Water Code nor chapter 8866 of the Special Districts Code define the term “agricultural crop.” With regard to undefined statutory terms, the Texas Supreme Court explained: “Terms that are not otherwise defined are typically given their ordinary meaning.” *Guitar Holding Co., L.P. v. Hudspeth Cty. Underground Water Conservation Dist.*, 263 S.W.3d 910, 915 (Tex. 2008) (citations omitted) (construing undefined terms in chapter 36 of the Water Code). To determine an undefined term’s meaning, courts “look to a wide variety of sources, including dictionary definitions [and] the use and definitions of the word in other statutes.” *Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014). “Agriculture” is a broad term, typically defined as “the science or art of cultivating the soil, harvesting crops, and raising livestock,” or “the production of plants and animals useful to man and in varying degrees the preparation of these products for man’s use and their disposal (as by marketing).” WEBSTER’S THIRD NEW INT’L DICTIONARY 44 (2002) (including “husbandry” and “farming” as synonyms). “Agricultural” is the adjectival form of the word. *Id.* at 43. In this context, a “crop” may be defined as “a plant or animal or plant or animal product that can be grown and harvested extensively for profit or subsistence.” *Id.* at 540. Thus, from the ordinary meaning of the words, an “agricultural crop” may include a wide variety of products.

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<sup>2</sup>RULES OF THE MID-EAST TEX. GROUNDWATER CONSERVATION DIST., Rule 2 (Dec. 17, 2013) at 3, <http://mideasttexasgcd.com/rules.htm> (“Mid-East Rule 2”).

Chapter 36 of the Water Code also defines “agriculture” broadly:

“Agriculture” means any of the following activities:

- (A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- (C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
- (D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
- (E) wildlife management; and
- (F) raising or keeping equine animals.

TEX. WATER CODE § 36.001(19)(A)–(F). As used in subsection (B), a “nursery grower” engages in “the actual cultivation or propagation of the product,” which “typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.” *Id.* § 36.001(22). “Agricultural use” is defined as “any use or activity involving agriculture, including irrigation.” *Id.* § 36.001(20). Because the Water Code governs groundwater conservation districts, its definitions inform the meaning of “agricultural crops” in section 8866.151 of the Special Districts Code.<sup>3</sup>

Chapter 36 authorizes a groundwater district to make rules to carry out its powers and duties. *Id.* § 36.101(a). A district could include in its rules its interpretation of terms in the statutes it enforces. But interpretation of a statute is a question of law that courts review *de novo*. *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 325 (Tex. 2017). The courts generally give an agency’s interpretation of statutes they enforce “serious consideration” if “the construction is reasonable and does not conflict with the statute’s language.” *Id.* at 325 (quotation marks omitted). Courts may defer to an agency’s construction of a statute only “[i]f there is vagueness, ambiguity, or room for policy determinations in a statute,” and the

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<sup>3</sup>For three groundwater districts, the Legislature has defined “agricultural crop” to include “a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown or kept for, or capable of, propagation and distribution.” TEX. SPEC. DIST. CODE § 8801.001(1)(B), (4-b); *id.* § 8834.001(1)(B), (5-b); *id.* § 8888.001(1)(B), (10). While these definitions appear in chapters concerning other districts and do not definitively establish the term’s meaning in chapter 8866, nonetheless they illustrate the potential scope of the term.

agency's interpretation is reasonable and not "plainly erroneous or inconsistent with the language of the statute." *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 438 (Tex. 2011).

The district's definition of agricultural crop as "food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed" closely comports with subsection 19(A) of the Water Code's "definition of agriculture." Compare Mid-East Rule 2, with TEX. WATER CODE § 36.001(19)(A). But by silence it excludes all other agricultural activities listed in subsection 36.001(19). TEX. WATER CODE § 36.001(19)(B)–(F). While not all activities listed in subsection 36.001(19) are relevant, at least two concern the production of plants as a crop. *Id.* § 36.001(19)(B) (including "the practice of floriculture, viticulture, silviculture, and horticulture"), (D) (including the activity of "planting cover crops, including cover crops cultivated for transplantation"). Irrigation for these purposes constitutes an agricultural use. *Id.* § 36.001(20). A definition of agricultural crop that excludes irrigation for these agricultural uses conflicts with section 36.001 of the Water Code.

Subsection 8866.151(b)(1) of the Special Districts Code does not authorize a district to choose whose agricultural uses will receive the statutory irrigation rate by defining "agricultural crop" more narrowly than section 36.001 of the Water Code allows. Therefore, a court would likely conclude that a groundwater conservation district does not have the authority to define "agricultural crop" as "food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed" to the extent that it excludes other products that constitute an agricultural crop under section 36.001 of the Water Code.

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Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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