

RESOLUTION AND ORDER NO. 04-23-047

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING FORBEARANCE AGREEMENTS OF PERMITTED EDWARDS GROUNDWATER RIGHTS BETWEEN THE EAA AND CERTAIN PERMIT HOLDERS AS LISTED HEREIN FOR THE VOLUNTARY IRRIGATION SUSPENSION PROGRAM OPTION IN SUPPORT OF THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN, AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THESE AGREEMENTS.

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created by the Edwards Aquifer Authority Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended (“Act”); and

WHEREAS, under Section 1.02 of the Act, the EAA is a conservation and reclamation district created by virtue of Article XVI, Section 59 of the Texas Constitution, and is a governmental agency and body politic and corporate vested with the full authority to exercise the powers and to perform the functions specified in the Act; and

WHEREAS, under Section 1.08(a) of the Act, the EAA has all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Edwards Aquifer (“Aquifer”) and to increase the recharge of, and prevent the waste or pollution of water in, the Aquifer; and

WHEREAS, under Section 1.11(d)(2) of the Act, the EAA may enter into contracts; and

WHEREAS, under Section 1.11(d)(9) of the Act, the EAA is authorized to hold an incidental take permit under the Federal Endangered Species Act of 1973 (“ESA”), 16 U.S.C. §§ 1531-1544; and

WHEREAS, under Section 1.14(a)(6), and (7) of the Act, the EAA is required to protect aquatic and wildlife habitat, and protect species that are designated as threatened or endangered under federal or state law; and

WHEREAS, under Section 1.14(h) of the Act, the EAA is required to implement a plan to ensure that springflows at Comal Springs and San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law; and

WHEREAS, under Section 1.26A of the Act, the EAA is required to develop and implement a recovery implementation program for the threatened and endangered species associated with the Aquifer; and

WHEREAS, on March 18, 2013, the U.S. Fish and Wildlife Service issued Incidental Take Permit No. TE63663A-1 (“ITP”), as amended, to the EAA, among others, under Section 10(a) (16 U.S.C. § 1539(a)) of the ESA; and

WHEREAS, accompanying the application for the ITP was a Habitat Conservation Plan (“EAHCP”) which, among other things, provides for the Conservation Measures identified in

Chapter 5 of the EAHCP which are intended to minimize and mitigate to the maximum extent practicable the incidental take of threatened and endangered species covered by the EAHCP resulting from the implementation of the Covered Activities identified in Chapter 2 of the EAHCP; and

WHEREAS, Section 5.1.2 of the EAHCP provides that the EAA will implement and administer the Voluntary Irrigation Suspension Program Option (“VISPO”) program wherein irrigators will be compensated to forbear exercising their rights to make withdrawals from the Aquifer during times of certain droughts under groundwater withdrawal permits issued by the EAA; and

WHEREAS, the EAA is implementing enrollment into the VISPO through the use of a Forbearance Agreement (“Agreement”); and

WHEREAS, the EAA Permits/Enforcement Committee, on March 28, 2023, voted to recommend the Board of Directors (“Board”) approve the Agreements listed herein and provide authorization to the General Manager to execute the Agreements; and

WHEREAS, Article 10.02(b) of the EAA Bylaws requires that any agreement, contract, or any other procurement instrument whose value exceeds \$100,000 be approved by a written resolution of the Board; and

WHEREAS, the total amount to be paid to the various permit holders under the Forbearance Agreements listed herein will exceed \$100,000; and

WHEREAS, the template agreement upon which these Agreements are based has been reviewed by the EAA legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board of the EAA was held on April 11, 2023, at 4:00 p.m., notice of public meeting having been duly and properly posted in accordance with Chapter 551, Texas Government Code; and

WHEREAS, the Board considered the Agenda Item that is the subject of this Resolution and Order; and

WHEREAS, a majority of the Directors was present and constituted a quorum of the Board; and

WHEREAS, a vote of the majority of the quorum of the Board present passed on, voted in favor of, and adopted the following Resolution and Order; and

WHEREAS, it is in the public interest that the EAA enter into the Agreements.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THAT:

Section 1. The recitals set out above are found to be true and correct, and they are hereby adopted by the Board of Directors and are made a part of this Resolution and Order for all purposes.

Section 2. The Board of Directors hereby approves the Forbearance Agreements for Permitted Edwards Groundwater Rights for the VISPO program in support of the EAHCP as summarized below:

Permit No.	Owner Name	Acre-feet Forborne	Term (years)	Agreement Costs (min)*	Agreement Costs (max)**
P100-947	Sidney H. Clary	500.000	5	\$135,000.00	\$535,000.00
P100-881	John A. Persyn and Karen P. Persyn	249.000	5	\$67,230.00	\$266,430.00
P101-616	Frank Persyn, Jr. and Henry Persyn	236.300	5	\$63,801.00	\$252,841.00
P101-886	Kristopher M. Benke	224.137	5	\$60,516.99	\$239,826.59
P100-123	HABY47 FARM, LLC	222.200	5	\$59,994.00	\$237,754.00
P101-031	Deborah Ann Benke	220.797	5	\$59,615.19	\$236,252.79
P101-020	Rodney Carl Hitzfelder	194.000	5	\$52,380.00	\$207,580.00
P101-225	Deborah Benke	145.810	5	\$39,368.70	\$156,016.70
P101-058	John A. Persyn and Karen P. Persyn	95.800	5	\$25,866.00	\$102,506.00
P104-266	John Aviel Persyn	87.721	5	\$23,684.67	\$93,861.47
P101-055	John A. Persyn and Karen P. Persyn	81.200	5	\$21,924.00	\$86,884.00
P108-565	Robyn Jagge Masrouri	72.500	5	\$19,575.00	\$77,575.00
P101-502	Raymond L. Jagge	72.500	5	\$19,575.00	\$77,575.00
P108-564	Sharon Jagge Rogers	21.000	5	\$5,670.00	\$22,470.00
P101-907	Sandra Moerbe	14.760	5	\$3,985.20	\$15,793.20
P104-265	John Aviel Persyn	10.837	5	\$2,925.99	\$11,595.59
P109-261	Dorothy Marie Bourquin DeCock	4.334	5	\$1,170.18	\$4,637.38
	Total:	2,452.896		\$662,281.92	\$2,624,598.72

* Assumes Standby Fees are paid for each year during the term of the Agreement, but *no* Forbearance Payments are paid during the term of the Agreement.

** Assumes both Standby Fees *and* Forbearance Payments are paid for each year during the term of the Agreement.

Section 3. The General Manager is authorized to execute the above-listed Forbearance Agreements on behalf of the EAA, deliver a fully executed copy of the Agreement to the enrolled Permit Holders referred to herein, and release payments as required by the Agreements.

Section 4. This Resolution and Order shall become effective from and after its adoption.

PASSED AND APPROVED BY THE EDWARDS AQUIFER AUTHORITY BOARD OF
DIRECTORS THIS 11th DAY OF APRIL, 2023.

Enrique P. Valdivia
Chairman, Board of Directors

ATTEST:

Benjamin F. Youngblood III
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel