

RESOLUTION AND ORDER NO. 02-16-838

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING AN AMENDMENT TO THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN FY 2016 PROGRAM FUNDING APPLICATION OF THE CITY OF NEW BRAUNFELS, BY INCREASING THE FUNDING REQUEST FROM \$1,331,500 TO \$1,441,500; FOR THE PURPOSE OF CONSTRUCTING THE BANK STABILIZATION PROJECT ON THE OLD CHANNEL OF THE COMAL RIVER.

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created in 1993 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 prevent the waste or pollution of water in, the Aquifer; and

WHEREAS, under Sections 1.01, 1.11, 1.14 and 1.26A of the Act, the EAA is authorized to implement programs designed to protect threatened and endangered species associated with the Aquifer; 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, Paragraph E of Incidental Take Permit No. TE63663A-1 (“ITP”) issued by the U.S. Fish and Wildlife Service to the EAA, the City of New Braunfels, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System, and Texas State University (“Permittees”), requires the Permittees to comply with the terms and conditions contained in the Edwards Aquifer Habitat Conservation Plan (“EAHCP”); and

WHEREAS, the EAHCP requires, among other things, the Permittees to implement various Conservation Measures intended to minimize or mitigate the impact of the use of groundwater withdrawn from the Aquifer on threatened and endangered species associated with the Aquifer and contribute to the recovery of such species; and

WHEREAS, a part of the EAHCP that certain Funding and Management Agreement (“FMA”) effective January 1, 2012, that provides the terms of the rights and duties of the Permittees for managing and funding the implementation of the EAHCP, and the terms of the Adaptive Management Process; and

WHEREAS, Section 6.1 of the FMA requires each Permittee to submit to the EAA a Program Funding Application (“PFA”) to provide funding from the EAA to implement each

Permittee's respective Conservation Measures, and such PFAs are required to be approved by the Board of Directors ("Board") of the EAA; and

WHEREAS, pursuant to Section 6.1 of the FMA, on November 10, 2015, the Board of Directors ("Board") approved the EAA's EAHCP 2015 funding application in the amount of \$1,331,500 seeking funding for the Conservation Measures and Program Activities assigned to the EAA in Chapters 5 and 6 of the EAHCP; and

WHEREAS, the original funding application included \$650,000 for Restoration of Riparian Zones also known as the "bank stabilization project on the Old Channel of the Comal River" of the City of New Braunfels ("Project"); and

WHEREAS, the City of New Braunfels desires to increase the amount of funding required to complete the Project from those costs previously estimated based on project bids that it has received for the Project by \$220,000, for a new total of \$870,000; and

WHEREAS, the EAA staff has reviewed the amended PFA and determined that it is complete and meets the approval criteria in Subsection 6.1.3 of the FMA, and recommends to the Board that the PFAs be approved as filed; and

WHEREAS, the Board hereby finds that the amended Application meets the application approval criteria Subsection 6.1.3 of the FMA as recommended by the EAA staff; and

WHEREAS, the Board has amended the Edwards Aquifer HCP Fund<sup>1</sup> budget and therefore finds that there are sufficient funds to provide funding to the EAA in the amount requested in the amended Application; and

WHEREAS, the EAA's Finance Committee, on January 26, 2016 voted to recommend the Board adopt a resolution and order approving the amended 2016 PFAs submitted by each the EAA and the City of New Braunfels; and

WHEREAS, a regular meeting of the Board was held on February 9, 2016, at 3:00 p.m., notice of public meeting having been duly and properly posted in accordance with Chapter 551, Texas Government Code; and

WHEREAS, an agenda item was duly listed in the notice of public meeting that is the subject of this Resolution and Order; and

WHEREAS, a majority of the Directors of the Board were present and constituted a quorum; 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 PFAs be approved and funding be provided in order to implement the terms and conditions of the EAHCP in compliance with the FMA and the ITP.

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<sup>1</sup> In the FMA, this fund is referred to as the HCP Program Account." See FMA §1.1.27

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 amendment to the Edwards Aquifer Habitat Conservation Plan FY 2016 Program Funding Application of the City of New Braunfels, increasing the funding request from \$1,331,500 to \$1,441,500; for the purpose of constructing the bank stabilization project on the Old Channel of the Comal River.
- Section 3. Pursuant to Subsection 6.1.5 of the FMA, the General Manager is directed to provide notice to the Permittees in writing of the Board's decision on the Program Funding Applications.
- Section 4. Pursuant to Article IV.A. of Interlocal Contract No. 13-675-HCP between the Edwards Aquifer Authority and the City of New Braunfels for Edwards Aquifer Habitat Conservation Plan Program Funding approved by this Board on November 12, 2013, the City of New Braunfels' 2016 Program Funding Application shall be considered to be a part of Contract No. 13-675-HCP for all purposes and attached as Exhibit A to that contract. The General Manager is authorized to release payment to the City of New Braunfels under this Resolution and Order in accordance with the terms and conditions as set out in the above-referenced EAHCP program funding contracts.
- Section 5. This Resolution and Order shall become effective from and after its adoption.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THIS 9<sup>th</sup> DAY OF FEBRUARY, 2016.

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Luana Buckner  
Chairman, Board of Directors

ATTEST:

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Enrique Valdivia  
Secretary, Board of Directors

APPROVED AS TO FORM:

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Darcy Alan Frownfelter  
General Counsel