

**EDWARDS AQUIFER AUTHORITY
State of Texas**

**IN THE MATTER OF THE FOLLOWING)
APPLICATION TO CONVERT BASE IRRIGATION)
GROUNDWATER:)
)
)
P108-788 Schertz 312, LLC)
(CO00119))**

**FINAL ORDER GRANTING APPLICATION
TO CONVERT BASE IRRIGATION GROUNDWATER**

ON THIS DAY CAME ON TO BE HEARD the above-styled and numbered Application to Convert Base Irrigation Groundwater (“Conversion Application” or “Application”) of Schertz 312, LLC (“Applicant”). As set forth below, the General Manager of the Edwards Aquifer Authority (“EAA”) issued notice of his proposed action on the Conversion Application. The Board of Directors (“Board”) of the EAA, after having reviewed and considered the summaries of the evidence for the Conversion Application as contained in the materials in the Board Packet, the arguments and presentation of the General Manager of the EAA, and the arguments and presentations of Applicant, or its representatives, and other applicants or permittees, or their representatives, who may have appeared before the Board, is of the opinion and finds that:

1. The facts necessary to support the General Manager’s proposed action to grant the Conversion Application have been established by convincing evidence; and

2. The General Manager’s proposed action is entitled to prevail with reference to the above-styled and numbered application.

Accordingly, the Board is of the opinion and finds that the Conversion Application should be **GRANTED**. In support of this Final Order, the Board makes its Findings of Fact and

Conclusions of Law as follows:

FINDINGS OF FACT

1. On January 9, 2001, the EAA issued Bernice S. Friesenhahn, et al, and the Scheel Family Trust Initial Regular Permit (“IRP”) No. 2001-CO00119 (P100-716) in the amount of 410.400 acre-feet/year (“AF/yr”) (205.200 AF/yr of Base Irrigation Groundwater rights or “BIG” and 205.200 AF/yr of Unrestricted Irrigation Groundwater rights or “UIG”) based on the irrigation of 205.200 acres of land (owned and sold) during the historical period (June 1, 1972 – May 31, 1993).

2. Following transfers of 180 acre-feet of UIG, on July 23, 2004, due to an amendment of the permit holder’s name, the EAA reissued P100-716 (CO00119) in the amount of 230.400 AF/yr (205.200 AF/yr BIG and 25.200 AF/yr UIG) to Bernice S. Friesenhahn, Trustee of the Scheel Revocable Trust.

3. On October 6, 2006, due to an amendment of the legal place of use, the EAA reissued P100-716 (CO00119) in the amount of 230.400 AF/yr (205.200 AF/yr BIG and 25.200 AF/yr UIG) to Bernice S. Friesenhahn, Trustee of the Scheel Revocable Trust (with 125.149 acre-feet BIG appurtenant to a 91.3 historically irrigated acre-tract (“HIA”), and 80.051 acre-feet BIG appurtenant to 58.400 HIA on a 60.140 acre-tract).

4. On June 29, 2007, due to the sale of the 60.140 acre-tract and water rights from Bernice S. Friesenhahn, Trustee of the Scheel Revocable Trust, to Lookout Road Development Company, L.P., a Texas limited partnership, pursuant to Special Warranty Deed With Vendor’s Lien dated October 30, 2006, and recorded as Document # 200606046590, Official Public

Records, Comal County, Texas, the EAA issued Regular Permit P103-458 (CO00119) in the amount of 80.051 AF/yr BIG to Lookout Road Development Company, L.P., a Texas limited partnership.

5. On August 1, 2018, due to the sale of land and water rights from Bernice S. Friesenhahn, Trustee of the Scheel Revocable Trust to Schertz 312, LLC pursuant to Special Warranty Deed dated June 21, 2018, and recorded as Document # 201806024987, Official Public Records, Comal County, Texas, EAA issued Regular Permit P108-788 (CO00119), derived from P100-716 (CO00119), in the amount of 125.149 AF/yr BIG to Schertz 312, LLC.

6. On July 3, 2018, the Applicant filed a Conversion Application with the EAA at the official business offices located at 900 E. Quincy, San Antonio, Texas. Applicant seeks issuance of an order granting the Conversion Application by converting 125.149 AF/yr of BIG to UIG.

7. After receipt of the Conversion Application, the General Manager of the EAA conducted an initial review of the Application for administrative completeness.

8. By letter dated July 12, 2018, the General Manager notified Applicant that he had determined that the Application was administratively complete.

9. After determining that the Conversion Application was administratively complete, the General Manager conducted a technical review of the Application for the purpose of determining if the Application should be granted or denied, in whole or in part.

10. After completing the technical review of the Conversion Application, the General Manager concluded that he should recommend to the Board that the Application be granted in whole.

11. In conjunction with the proposed action, the General Manager prepared a Technical Summary.

12. On April 12, 2019, the General Manager provided written notice by United States mail to Applicant that technical review of the Conversion Application was complete, and provided Applicant with a copy of the proposed action and Technical Summary in support thereof.

13. The Docket Clerk of the EAA scheduled before the Board a presentation by the General Manager on the Conversion Application, his proposed action, and the proposed issuance of a Regular Permit in accordance therewith. The presentation occurred at the regular meeting of the Board held on May 14, 2019, at the official offices of the Edwards Aquifer Authority, 900 E. Quincy, San Antonio, Texas. Notice of public meeting for this meeting was duly and properly posted in accordance with Chapter 551, Texas Government Code. Additionally, an agenda item that is the subject of this Final Order was duly and properly listed in the notice of public meeting.

14. On April 12, 2019, the EAA provided written notice to Applicant by United States mail, that Applicant's Conversion Application was scheduled for consideration at the regular meeting of the Board on May 14, 2019, at the official offices of the Edwards Aquifer Authority, 900 E. Quincy, San Antonio, Texas.

15. The Conversion Application was, contemporaneous with its receipt, affixed with a "date stamp" by the EAA to the front page of the Application indicating its date of receipt by the EAA.

16. Applicant paid the application fee of \$25 at the time the Conversion Application was filed with the EAA.

17. Applicant is not delinquent in the payment of any fee due and owing to the EAA, including but not limited to aquifer management fees.

18. Applicant has filed with the EAA all applicable reports.

19. The place of use set out in Regular Permit P108-788 (CO00119) was irrigated land during the historical period. A description of the irrigated lands is as follows:

the tract(s) of land more fully described in Special Warranty Deed dated 6/21/2018 as recorded with the Clerk as Document # 201806024987, Official Public Records, Comal County, Texas.

20. A change in land use has occurred relative to the historically irrigated lands constituting the place of use set out in Regular Permit P108-788 (CO00119) such that these lands are no longer practicable to farm: the historically irrigated land has not been irrigated for more than three years; due to surrounding development, continuing agricultural activities on the land have the potential to compromise the health and safety of a farm operator or the general public occupying or residing on adjacent properties; and surrounding development substantially impairs any continued agricultural activities on the historically irrigated land. The well used to irrigate the historically irrigated land that is the subject of the application has been plugged.

21. A map showing the location of the 91.300 acres is attached as Exhibit A.

22. Applicant was not required to submit a groundwater conservation plan to the EAA.

23. Applicant is in compliance with the Act, the EAA's rules, other permits, and orders of the Board.

24. Applicant is the owner of the land to which the BIG that is the subject of the

Conversion Application is appurtenant.

25. Applicant was not required to submit a new survey of the historically irrigated acres constituting the place of use set out in Regular Permit P108-788 (CO00119).

CONCLUSIONS OF LAW

1. Because the Conversion Application seeks to convert BIG in the IRP to UIG associated with a groundwater withdrawal permit issued by the EAA, the Board of Directors of the EAA has jurisdiction over the Application.

2. The Conversion Application meets the requirements of Section 711.342(6)(D) of the EAA Rules and, therefore, a change in land use has occurred relative to the historically irrigated lands constituting the place of use set out in Regular Permit P108-788 (CO00119) such that these lands are no longer practicable to farm.

3. The Conversion Application otherwise complies with the Act and the EAA's Rules.

4. Accordingly, the Conversion Application should be granted in accordance with this Final Order hereby converting 125.149 AF/yr of BIG to UIG associated with Regular Permit P108-788 (CO00119) and the historically irrigated lands constituting the place of use for this Permit.

ORDERING PROVISION

IT IS THEREFORE ADJUDGED, ORDERED, AND DECREED that the above-styled and numbered Conversion Application is hereby **GRANTED** as follows:

1. The General Manager is directed to advise Applicant in writing of the issuance and

effect of this Final Order;

2. When appropriate as determined by the General Manager, the General Manager is directed to prepare an amended Regular Permit reflecting the issuance and effect of this Final Order in the form of the approved Regular Permit form and subject to the Conditions for Regular Permits as may be in effect at the time of the issuance of this Final Order, for presentation to the Chairman of the Board of Directors of the EAA for signature; and

3. The General Manager is directed to make appropriate adjustments, changes, or modifications to the EAA's permits and water accounting database consistent with the issuance and effect of this Final Order.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS
AQUIFER AUTHORITY THIS 14TH DAY OF MAY, 2019.

LUANA BUCKNER
Chairman, Board of Directors
Edwards Aquifer Authority

ATTEST:

ENRIQUE VALDIVIA
Secretary, Board of Directors
Edwards Aquifer Authority

APPROVED AS TO FORM:



DARCY ALAN FROWN FELTER
General Counsel