

RESOLUTION AND ORDER NO. 01-25-116

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 RATIFYING THE EXECUTION OF THESE AGREEMENTS BY THE GENERAL MANAGER

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created by the Edwards Aquifer Authority Act of May 30, 1993, 73<sup>rd</sup> 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, in order to optimize the number of VISPO Forbearance Agreements that could be obtained during calendar year 2024, at its November 12, 2024 meeting, the EAA Board of Directors (“Board”) authorized the General Manager to execute VISPO Forbearance Agreements for the remainder of 2024 without Board approval by resolution and order; and

WHEREAS, in light thereof, the General Manager executed a number of such Agreements without a written resolution and order from the Board; 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 forbearance 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 January 14, 2025, at 1:00 p.m., notice of public meeting having been duly and properly posted in accordance with Chapter 551, Texas Government Code; and

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

WHEREAS, the Board duly considered and took action on the Agenda Item that is the subject of this Resolution and Order; 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:

<b>Permit No.</b>	<b>Owner Name</b>	<b>Acre-feet Enrolled</b>	<b>Term (years)</b>	<b>Agreement Costs (min)*</b>	<b>Agreement Costs (max)**</b>
P101-895	Lonesome Dove Corner, LLC and Rocky Ridge Mountain, LLC	750.000	2	\$81,000.00	\$321,000.00
P101-669	Donald E. Mosing, Larry K. Mosing, Billy F. Mosing and Mosing Land and Cattle Co. d/b/a 4-M Ranch	604.900	2	\$65,329.20	\$258,897.20
P200-325	Thomas A. Verstuyft, Betty Verstuyft and Randal T. Verstuyft	240.000	2	\$25,920.00	\$102,720.00
P102-155	Kenneth Cole, Nova Cole, and Jason Cole	225.000	2	\$24,300.00	\$96,300.00
P107-791	EDMRGE Farms III, Ltd.	225.000	2	\$24,300.00	\$96,300.00
P102-160	Larry V. Emerson and Michael E. McHugh	192.136	2	\$20,750.69	\$82,234.21
P101-872	John T. Brigman	185.000	2	\$19,980.00	\$79,180.00
P101-965	James Ray Carnes, Jr.	183.104	2	\$19,775.23	\$78,368.51
P102-149	Evan B. Mathis and wife, Betty K. Mathis and Jamie Ann Mathis	160.500	2	\$17,334.00	\$68,694.00
P104-375	Henry C. Verstraeten, Jr.	120.620	2	\$13,026.96	\$51,625.36
P101-019	Emilie E. Cowan	100.000	2	\$10,800.00	\$42,800.00
P104-341	Frank Verstraeten	81.900	2	\$8,845.20	\$35,053.20
P108-309	Edwin L. Yanta	69.960	2	\$7,555.68	\$29,942.88
P109-369	Robert M. Hendry and Amy Wolff Hendry	46.007	2	\$4,968.76	\$19,691.00
P109-355	Dorothy Elaine	43.993	2	\$4,751.24	\$18,829.00

	Weynand Wolff				
P103-810	Roy M. Kothmann and Carol C. Kothmann	30.000	2	\$3,240.00	\$12,840.00
P200-415	James E. Verstuyft	28.330	2	\$3,059.64	\$12,125.24
P109-357	Deborah Jean Weynand Werth	20.000	2	\$2,160.00	\$8,560.00
P109-358	Tina Marie Weynand Mumme	20.000	2	\$2,160.00	\$8,560.00
P109-359	Lance Attaway and Mardy Attaway Foster	20.000	2	\$2,160.00	\$8,560.00
P101-436	Russel A. Ellinger	10.000	2	\$1,080.00	\$4,280.00
P101-438	Sherman Mumme	10.000	2	\$1,080.00	\$4,280.00
P106-862	Frank G. DeCock	5.000	2	\$540.00	\$2,140.00
P106-863	Charles Maurice Wurzbach and Jill Ann McDonald	5.000	2	\$540.00	\$2,140.00
P101-821	Farr Investments, LP	150.000	4	\$32,400.00	\$128,400.00
P101-707	Weldon Gilleland and wife, Judie M. Gilleland	146.000	4	\$31,536.00	\$124,976.00
P108-914	Albert Townsend Consulting, LLC	72.441	4	\$15,647.26	\$62,009.50
P104-875	Arthur G. Ilse and Lynn M. Ilse	63.768	4	\$13,773.89	\$54,585.41
P101-712	Weldon Gilleland and wife, Judie M. Gilleland	23.605	4	\$5,098.68	\$20,205.88
P200-280	Medina County ESD#6	7.486	4	\$1,616.98	\$6,408.02
P105-207	Dennis Lee Ezell and wife Jamie Lynn Ezell	6.000	4	\$1,296.00	\$5,136.00
P105-108	Lisa W. Morgan and James H. Morgan	5.000	4	\$1,080.00	\$4,280.00
	<b>Total:</b>	<b>3,850.750</b>		<b>\$467,105.40</b>	<b>\$1,851,121.40</b>

\* 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 Board of Directors hereby ratifies the General Manager's prior execution of the above-listed VISPO Forbearance Agreements on behalf of the EAA and directs the General Manager to deliver fully executed copies of the Agreements to the 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 14<sup>th</sup> DAY OF JANUARY 2025.

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Enrique P. Valdivia  
Chairman, Board of Directors

ATTEST:

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Benjamin F. Youngblood III  
Secretary, Board of Directors

APPROVED AS TO FORM:

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Darcy Alan Frownfelter  
General Counsel