

EDWARDS AQUIFER AUTHORITY
State of Texas

IN THE MATTER OF THE FOLLOWING)
APPLICATION TO CONVERT BASE IRRIGATION)
GROUNDWATER:)
)
)
P109-090 **Michael S. Hackebeil and Rebecca M. Hackebeil**)
(ME00349))

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 Michael S. Hackebeil and Rebecca M. Hackebeil (“Applicants”). 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 the Applicants, or their 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 partially **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 31, 2001, Joe M. Fohn and Charles H. Fohn were granted Initial Regular Permit No. 2001-ME00349 (P100-227) by the EAA in the amount of 1450.800 acre-feet/year (“AF/yr”) (725.400 AF/yr base irrigation groundwater rights (“BIG”) and 725.400 AF/yr unrestricted irrigation groundwater rights (“UIG”)) based on the irrigation of 725.400 acres of land during the historical period (June 1, 1972 – May 31, 1993).

2. On September 12, 2007, due to the transfer of 50 AF/yr of UIG associated with IRP P100-227 (ME00349) from Joe M. Fohn and Charles H. Fohn to the San Antonio Water System by Correction Water Warranty Deed dated June 6, 2007, and recorded as Document # 20070134744, Official Public Records, Bexar County, Texas, the EAA issued Regular Permit P103-597 to San Antonio Water System for 50 AF/yr UIG.

3. On July 12, 2011, due to the sale of land and water rights from IRP P100-227 (ME00349) from Joe M. Fohn and Charles H. Fohn to Charles H. Fohn pursuant to Correction Partition Deed dated September 22, 2010, and recorded as Document # 2011003731, Official Public, Medina County, Texas, the EAA issued Regular Permit P105-121 (ME00349) in the amount of 648.000 AF/yr (305.730 AF/yr BIG and 342.270 AF/yr UIG) to Charles H. Fohn.

4. On November 13, 2018, due to the sale of land and water rights from Charles H. Fohn to Charles Fohn Family Investments, LLC, pursuant to General Warranty Deed dated December 12, 2012, and recorded as Document # 2012008868, Official Public, Medina County,

Texas, the EAA re-issued Regular Permit P105-121 (ME00349) to Charles Fohn Family Investments, LLC.

5. On October 1, 2019, due to the sale of 494.707 acres of land, including 125.557 historically irrigated acres (“HIA”), from P105-121 (ME00349) from Charles Fohn Family Investments, LLC to Michael S. Hackebeit and Rebecca M. Hackebeit, pursuant to Warranty Deed with Vendor’s Lien dated July 24, 2019, and recorded as Document # 2019005346, Official Public Records, Medina County, Texas, the EAA issued P109-090 (ME00349) in the amount of 127.817 AF/yr BIG to Michael S. Hackebeit and Rebecca M. Hackebeit.

6. On April 1, 2020, the Applicants filed a Conversion Application with the EAA at the official business offices located at 900 E. Quincy, San Antonio, Texas. The Applicants seek issuance of an order granting the Conversion Application by converting 127.817 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 April 2, 2020, the General Manager notified the Applicants 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 would recommend to the Board that the Application be granted in part

and denied in part, and a regular permit be issued to the Applicants after converting 104.823 acre-feet BIG to UIG based on the physical development of approximately 9.9 acres of HIA and the location of 102.970 HIA in a floodplain, of which 93.070 acres represent undeveloped HIA that are eligible for consideration as developed land under the land/development ratio considered for the conversion. In addition, the General Manager determined that the conversion calculation should be based on a 1.018 acre-foot/acre ratio due to the presence of stacked BIG (127.817 acre-feet on 125.557 acres) on the HIA.

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

12. On October 9, 2020, the General Manager provided written notice to the Applicants by United States mail that the technical review of the Application was complete, provided the proposed action and Technical Summary in support thereof, and informed the Applicant that the Applicants' Conversion Application was scheduled for consideration at the regular meeting of the Board on December 8, 2020, at the official offices of the Edwards Aquifer Authority, 900 E. Quincy, San Antonio, Texas.

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 December 8, 2020, 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 and the Governor's orders temporarily suspending certain provisions of Chapter 551 due to the Covid-19 pandemic.

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 October 15, 2020, pursuant to EAA Rule § 707.525, the EAA published a Notice of Proposed Action on Application For Conversion Of Base Irrigation Groundwater To Unrestricted Irrigation Groundwater in five (5) newspapers within the EAA's jurisdiction outlining the General Manager's proposed action.

15. On October 15, 2020, pursuant to § 1.34 of the EAA Act and § 711.342(c) of the EAA's Rules, the EAA provided permit holders, by United States mail, a copy of the Notice Of Proposed Action On Application For Conversion Of Base Irrigation Groundwater To Unrestricted Irrigation Groundwater, outlining the General Manager's proposed action.

16. In accordance with §§ 707.525 and 707.603, the October 9, 2020 written letter to the Applicants, the October 15, 2020 newspaper publications, and the October 15, 2020 letters to permit holders provided notice of the right for any permit holder to request a contested case hearing on the Application and the General Manager's proposed action. The deadline to request a contested case hearing was November 16, 2020. No requests were received.

17. 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.

18. The Applicants paid the application fee of \$25 at the time the Conversion Application was filed with the EAA.

19. The Applicants are not delinquent in the payment of any fee due and owing to the

EAA, including but not limited to aquifer management fees.

20. The Applicants have filed with the EAA all applicable reports.

21. The place of use set out in Regular Permit P109-090 (ME00349) includes irrigated land during the historical period. A description of the lands is as follows:

The tract(s) of land more fully described in Warranty Deed with Vendor's Lien dated 7/24/2019 as recorded with the Clerk as Document # 2019005346, Official Public Records, Medina County, Texas.

22. A change in land use has occurred relative to the historically irrigated lands constituting the place of use set out in Regular Permit P109-090 (ME00349) such that, in accordance with EAA Rules § 711.342(c)(6)(A), approximately 7.4 HIA have been developed into a lot with garages used for the purpose of servicing large trucks associated with activities at an adjacent quarry, and 2.5 acres of land have been developed into permanent roads. Additionally, a portion of the HIA cannot be developed because of its location within a floodplain. Approximately 102.970 acres (82%) of the 125.557 HIA are within a 100-year flood plain. Of the 102.970 acres within the flood plain, 93.070 acres of undeveloped HIA are eligible to be considered as developed under Section 1.34(e) of the EAA Act and 711.342(d) of the EAA rules.

23. A map showing the location of the HIA is attached as Exhibit A.

24. The Applicants were not required to submit a groundwater conservation plan to the EAA.

25. The Applicants are in compliance with the Act, the EAA's rules, other permits, and orders of the Board.

26. The Applicants are the owners of the land to which the BIG that is the subject of the Conversion Application is appurtenant.

27. The Applicants were not required to submit a new survey of the historically irrigated acres constituting the place of use set out in Regular Permit P109-090 (ME00349).

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 Sections § 711.342(c)(6)(A) and § 711.342(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 P109-090 (ME00349) such that these lands have been developed.

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 Based, hereby converting 104.823 AF/yr of BIG to UIG associated with Regular Permit P109-090 (ME00349) 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 the Applicants 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 8TH DAY OF DECEMBER, 2020.

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 Frownfelter

Darcy Alan Frownfelter (Dec 3, 2020 14:09 CST)

DARCY ALAN FROWNFEITER
General Counsel






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Final Audit Report

2020-12-03

Created:	2020-12-03
By:	Jennifer Wong Esparza (jesparza@edwardsaquifer.org)
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