

**EDWARDS AQUIFER AUTHORITY
State of Texas**

**IN THE MATTER OF THE FOLLOWING
APPLICATION TO CONVERT BASE IRRIGATION
GROUNDWATER:**)
)
)
)
P108-198 **Ben and Shelia Johnston**)
(CO00128))

**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 Ben and Shelia Johnston (“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 **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 July 13, 2004, Leon and Evelyn Timmermann were granted Initial Regular Permit No. 2004-CO00128 (P100-734) by the EAA in the amount of 86.000 acre-feet/year (“AF/yr”) (43.000 AF/yr Base Irrigation Groundwater (“BIG”) and 43.000 AF/yr Unrestricted Irrigation Groundwater (“UIG”)) based on the irrigation of 43.000 acres of land during the historical period (June 1, 1972 – May 31, 1993).

2. On April 13, 2013, due to the sale of land and water rights from Leon and Evelyn Timmermann to Cactus and Brush, LP pursuant to Special Warranty Deed dated September 27, 2012, and recorded as Document # 201206034170, Official Public Records, Comal County, Texas, the EAA approved the transfer of ownership of P100-734 (CO00128) to Cactus and Brush, LP.

3. On June 9, 2015, due to the Irrevocable Designation of Historically Irrigated Lands Pertaining to Edwards Aquifer Groundwater Rights approved on May 5, 2015, and recorded as Document # 201506017941, Official Public Records, Comal County, Texas, the EAA re-issued P100-734 (CO00128) to Cactus and Brush, LP.

4. On July 26, 2016, due to the sale of land and water rights from IRP P101-734 (CO00128) from Cactus and Brush, LP to Benjamin and Shelia Johnston pursuant to Special Warranty Deed dated June 30, 2016, and recorded as Document # 201606026588, Official Public Records, Comal County, Texas, the EAA issued Regular Permit P108-198 (CO00128) in the

amount of 8.599 AF/yr (8.599 AF/yr BIG and 0.000 AF/yr UIG) to Applicants.

6. On November 3, 2016, 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 8.599 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 November 7, 2016, 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 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 January 13, 2017, the General Manager provided written notice by United States mail to the Applicants that technical review of the Conversion Application was complete, and provided the Applicants 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 February 14, 2017, 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 January 13, 2017, the EAA provided written notice to the Applicants by United States mail, that Applicants' Conversion Application was scheduled for consideration at the regular meeting of the Board on February 14, 2017, 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. The Applicants paid the application fee of \$25 at the time the Conversion Application was filed with the EAA.

17. 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.

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

19. The place of use set out in Regular Permit P108-198 (CO00128) 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 6/30/2016 as recorded with the Clerk as Document # 201606026588, 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 P108-198 (CO00128) such that these lands are no longer practicable to farm. First, a review of appropriate mapping and GIS data bases shows that these lands are located within the City of San Antonio's extraterritorial jurisdiction. Second, the lands are sufficiently bordered by development. Finally, according to the annual water reports on file with the EAA, these lands have not been irrigated in five or more years.

21. A map showing the location of the 8.599 acres is attached as Exhibit A.

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

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

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

25. 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 P108-198 (CO00128).

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)(B) 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 P108-198 (CO00128) 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 8.599 AF/yr of BIG to UIG associated with Regular Permit P108-198 (CO00128) 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.

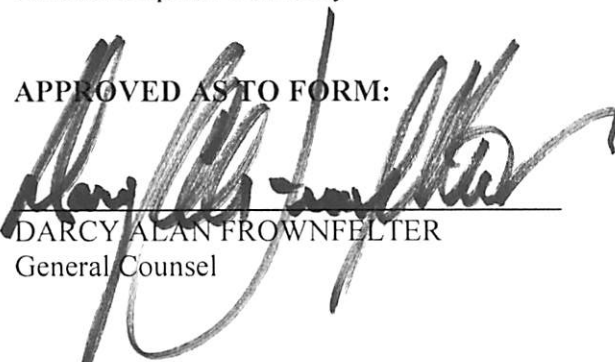
PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS
AQUIFER AUTHORITY THIS 14TH DAY OF FEBRUARY, 2017.

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