

EDWARDS AQUIFER AUTHORITY
State of Texas

IN THE MATTER OF THE FOLLOWING)
APPLICATION TO CONVERT BASE IRRIGATION)
GROUNDWATER:)

P109-318 KB Home Lone Star, Inc.)
(BE00222))

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 KB Home Lone Star, Inc. (“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 the 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 1, 2002, Charles Jerome Haner was granted Initial Regular Permit 2001-BE00222 (P100-521 (BE00222)), in the amount of 385.200 acre-feet (“AF”) (192.600 AF of Base Irrigation Groundwater “BIG” and 192.600 AF of Unrestricted Irrigation Groundwater “UIG” rights), based on the ownership of 194.56 acres of land, of which 192.60 acres were irrigated during the historical period (June 1, 1972 – May 31, 1993).

2. On August 24, 2004, due to the sale of 179.152 historically irrigated acres associated with Initial Regular Permit P100-521 (BE00222) from Charles Jerome Haner to Timothy J. Crowley and Lynn Goode Crowley, pursuant to General Warranty Deed with Vendor’s Lien dated June 1, 2004, and recorded as Document # 20040122565, Official Public Records, Bexar County, Texas, and from Timothy J. Crowley and Lynne Goode Crowley to Garrett A.S.M., Ltd., a Texas limited partnership, pursuant to Special Warranty Deed with Vendor’s Lien dated January 11, 2005, and recorded as Document # 20050008055, Official Public Records, Bexar County, and from Garrett A.S.M., Ltd., a Texas limited partnership, to James Kerby, pursuant to Special Warranty Deed dated March 9, 2006, and recorded as Document # 20060054556, Official Public Records, Bexar County, Texas, and from James Kerby to Louis D. Kowalski and Yates Living Trust, pursuant to Special Warranty Deed dated March 9, 2006, and recorded as Document # 20060054557, Official Public Records, Bexar County, Texas, and from to Louis D. Kowalski and Yates Living Trust to Kerby Development LLC, pursuant to Special Warranty Deed dated July 14, 2006, and recorded as Document # 20060173484, Official Public Records, Bexar County, Texas, the EAA reissued Regular Permit P100-522 (BE00222) to Kerby Development, LLC, in the amount of 179.152 AF of BIG.

3. On August 25, 2010, due to the sale of 179.152 historically irrigated acres associated with Regular Permit P100-522 (BE00222) from Kerby Development, LLC to Culebra SA 179 Acre Residential Development LP, pursuant to General Warranty Deed with Vendor's Lien dated July 21, 2006, and recorded as Document # 20060173485, Official Public Records, Bexar County, Texas, and from Culebra SA 179 Acre Residential Development LP to Falcon International Bank, pursuant to Substitute Trustee's Deed dated February 3, 2010, and recorded as Document # 20100017851, Official Public Records, Bexar County, Texas, and from Falcon International Bank to Robert Pittenger Company, pursuant to Special Warranty Deed dated February 2, 2012, and recorded as Document # 20120019546, Official Public Records, Bexar County, Texas, and from Robert Pittenger Company to San Antonio – Culebra Road LLC, a North Carolina limited liability company, pursuant to Special Warranty Deed dated February 2, 2012, and recorded as Document # 20120019593, Official Public Records, Bexar County, Texas, and of a 17.6991% interest as a tenant-in-common of the 179.152 historically irrigated acres associated with Regular Permit P100-522 (BE00222) from San Antonio – Culebra Road LLC, a North Carolina limited liability company, to NC San Antonio Culebra Partners, LLC, a North Carolina limited liability company, pursuant to Special Warranty Deed dated February 8, 2012, and recorded as Document # 20120023053, Official Public Records, Bexar County, Texas, and of a 82.3009% undivided interest and a 17.6991% undivided interest in 96.061 of the historically irrigated acres associated with Regular Permit P100-522 (BE00222) from San Antonio – Culebra Road LLC, a North Carolina limited liability company, and NC San Antonio Culebra Partners, LLC, a North Carolina limited liability company, respectively, to Applicant, pursuant to Special Warranty Deed dated April 29, 2019, and recorded as Document # 20190077822, Official Public Records, Bexar County, Texas, the EAA issued Regular Permit P109-318 (BE00222) to Applicant

in the amount of 96.061 AF of BIG.

4. On August 10, 2021, pursuant to the Board's approval of a Conversion Application, the EAA converted 32.871 acre-feet of BIG to UIG and reissued P109-318 for 96.061 AF (63.190 of BIG & 32.871 of UIG).

5. On March 14, 2022, Applicant filed a Conversion Application with the EAA at the official business offices located at 900 E. Quincy, San Antonio, Texas. Applicant seeks to convert 22.357 AF of BIG to UIG due to a change in land use.

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

7. By letter dated March 16, 2022, the General Manager notified the Applicant that he had determined that the Application was administratively complete.

8. 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.

9. 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.

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

11. On August 22, 2022, the General Manager provided written notice by United States mail to the Applicant that technical review of the Conversion Application was complete and provided the Applicant with a copy of the proposed action and Technical Summary in support thereof.

12. 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 associated therewith. The presentation occurred at the regular meeting of the Board on October 11, 2022, at 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.

13. Between the dates of August 24, 2022, and August 25, 2022, pursuant to EAA Rules § 707.525, the Applicant published a Notice of Proposed Action on Application for Conversion of Base Irrigation Groundwater to Unrestricted Irrigation Groundwater in five newspapers within the EAA's jurisdiction, outlining the General Manager's proposed action.

14. On August 24, 2022, 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.

15. In accordance with §§ 707.525 and 707.603, the August 22, 2022 written letter to the Applicant, the newspaper publications ranging from August 24, 2022, through August 25, 2022, and the August 24, 2022 letter 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 September 26, 2022. No requests were received.

16. 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.

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

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

19. The Applicant has filed with the EAA all applicable reports.

20. The place of use set out in the Regular Permit 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 4/22/2019 as recorded with the Clerk as Document # 20190077822, Official Public Records, Bexar County, Texas.

21. A change in land use has occurred relative to the historically irrigated lands constituting the place of use set out in Regular Permit P109-318 (BE000222), such that, in accordance with EAA Rules § 711.342(c)(6)(A), approximately 22.357 historically irrigated acres are being developed into a subdivision as evidenced by the clearing and grading of land, the construction of roads and drainage features and the installation of utilities.

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

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

24. The Applicant is the owner of the land to which the BIG is appurtenant.

25. The Applicant was not required to submit a new survey of the historically irrigated acres.

CONCLUSIONS OF LAW

1. Because the Conversion Application seeks to convert BIG in the IRP to UIG associated with the 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)(A) 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 P109-318 (BE00222) 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 22.357 AF/yr of BIG to UIG associated with Regular Permit P109-318 (BE00222) 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 to Applicant 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, for presentation to the Chairman of the Board of Directors of the EAA for execution; 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 this Final Order.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS
AQUIFER AUTHORITY THIS 11TH DAY OF OCTOBER 2022.

LUANA BUCKNER
Chairman, Board of Directors
Edwards Aquifer Authority

ATTEST:

BENJAMIN F. YOUNGBLOOD, III
Secretary, Board of Directors
Edwards Aquifer Authority

APPROVED AS TO FORM:

DARCY ALAN FROWNFELTER
General Counsel