

RESOLUTION AND ORDER NO. 11-22-043

OF THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER
AUTHORITY ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR
2023, AND ASSESSING AQUIFER MANAGEMENT FEE AND PROGRAM
AQUIFER MANAGEMENT FEE RATES FOR 2023

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created by the Edwards Aquifer Authority Act, Act of May 30, 1993, 73rd 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, Section 49.057(b) of the Texas Water Code, Section 709.19(c)(1) of the Edwards Aquifer Authority Rules (“EAA Rules”), and Article 9.02(b) of the Edwards Aquifer Authority Bylaws require that the Board of Directors (“Board”) of the EAA prepare and adopt an annual budget; and

WHEREAS, Section 1.29(b) of the Act provides that the EAA “shall assess equitable aquifer management fees based on aquifer use . . . to finance its administrative expenses and programs authorized under [the Act]” and Section 709.17 of the EAA Rules provides that the EAA shall assess aquifer management fees (“AMFs”) “for all authorized and unauthorized withdrawals of groundwater from the Aquifer”; and

WHEREAS, Section 709.18(a) of the EAA Rules provides that the AMFs shall consist of: (1) AMFs for the EAA’s annual operating revenue requirements; and (2) program AMFs (“PAMFs”) for implementation of the Edwards Aquifer Habitat Conservation Plan (“EAHCP”) Program; and

WHEREAS, Section 1.29(b) of the Act and Section 709.23(a) of the EAA Rules provide that the EAA may collect a total amount of AMFs that is reasonably necessary for the annual operating revenue requirements for the administration of the EAA; and

WHEREAS, Section 1.29(b) of the Act also provides that the EAA may not increase AMFs (including PAMFs) by more than 8% per year; and

WHEREAS, Section 709.19(b) of the EAA Rules provides that the AMF shall be based on two user blocks: agricultural users and non-agricultural users; and

WHEREAS, Section 709.19(c)(1) of the EAA Rules provides that the Board, by resolution and order, shall annually adopt a Block I AMF rate and budget for non-agricultural users reflecting its annual operating revenue requirements for the succeeding fiscal year; and

WHEREAS, Section 709.19(c)(1) of the EAA Rules provides that, in addition to an AMF for its annual operating revenue requirements, the EAA shall calculate a PAMF necessary to implement the EAHCP; and

WHEREAS, Section 709.19(c)(2)(C) of the EAA Rules provides that the EAA shall calculate the AMF that may be assessed against Block 1 non-agricultural use on a unit basis and assessed on the total volume of groundwater authorized to be withdrawn in a groundwater withdrawal permit; and

WHEREAS, Section 1.29(e) of the Act and Section 709.19(c)(3) of the EAA Rules provide that the AMF for Block 2 agricultural users may not be more than \$2.00 per acre-foot; and

WHEREAS, the EAA held a public meeting in the EAA Board Room, as well as virtually via Zoom Videoconference, on October 12, 2022 to take public comment on the proposed FY 2023 budget, AMFs, and PAMFs; and

WHEREAS, the Board has determined that adoption of the budget, AMFs, and the PAMFs associated therewith, is reasonably necessary for the administration of the EAA, including for the implementation of the EAHCP, and that each and every act, project and expenditure contained in the budget is an administrative expense or program authorized under the Act; and

WHEREAS, payment of AMFs alone does not guarantee the right to withdraw groundwater from the Edwards Aquifer, since all withdrawals are subject to the Act, the rules of the EAA, orders of the Board, the terms and conditions of any permits issued by the EAA, and any other applicable federal, state, and local law; and

WHEREAS, a regular meeting of the Board of the EAA was held on November 8, 2022, at 4:00 p.m., notice of public meeting having been duly and properly posted in accordance with Chapter 551, Texas Government Code; and

WHEREAS, an agenda item was duly listed in the notice of public meeting that is the subject of this Resolution and Order; and

WHEREAS, a majority of the Directors were in attendance 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 in attendance passed on, voted in favor of, and adopted the following Resolution and Order; and

WHEREAS, it is in the public interest that the EAA adopt an annual budget and assess AMFs and PAMFs for FY 2023.

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 Fiscal Year 2023 Annual Budget attached to this Resolution and Order is hereby adopted.
- Section 3. The Fiscal Year 2023 Annual Budget may be amended pursuant to a duly passed oral motion made at a duly called meeting of the Board of Directors without the necessity of adopting a new or revised Resolution and Order.
- Section 4. As provided by Section 709.19(c)(2)(C) of the EAA Rules, the AMF for Block 1 non-agricultural users shall be calculated and assessed by the General Manager of the EAA on a unit cost basis resulting in an AMF rate of \$54.00 per acre-foot per annum for fiscal year 2023.
- Section 5. As provided by Section 709.19(c)(2)(C) of the EAA Rules, the PAMF for Block 1 non-agricultural users shall be calculated and assessed by the General Manager of the EAA on a unit cost basis resulting in a PAMF rate of \$30.00 per acre-foot per annum for fiscal year 2023.
- Section 6. As provided by Section 1.29(e) of the Act and Section 709.19(c)(3) of the EAA Rules, the General Manager of the EAA shall calculate and assess the AMF rate for Block 2 agricultural users at \$2.00 per acre-foot per annum for fiscal year 2023.
- Section 7. As provided by Section 1.29(b) of the Act, the AMFs and PAMFs assessed above in Sections 4-6 for fiscal year 2023 do not constitute an increase of AMFs by more than 8% from the preceding fiscal year 2022.
- Section 8. This Resolution and Order shall become effective from and after its adoption.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THIS THE 8TH DAY OF NOVEMBER 2022.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Benjamin F. Youngblood, III
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel