

RESOLUTION AND ORDER NO. 11-22-042

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN FY2023 PROGRAM FUNDING APPLICATIONS SUBMITTED BY: THE EDWARDS AQUIFER AUTHORITY, IN AN AMOUNT NOT TO EXCEED \$19,844,684; THE CITY OF NEW BRAUNFELS, IN AN AMOUNT NOT TO EXCEED \$1,055,385; AND THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY, IN AN AMOUNT NOT TO EXCEED \$1,461,425, FOR THE PURPOSE OF IMPLEMENTING THE CONSERVATION MEASURES AND PROGRAM ACTIVITIES AS REQUIRED BY THE EAHCP, FOR THE PERIOD JANUARY 1, 2023, THROUGH DECEMBER 31, 2023

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created by the Edwards Aquifer Authority 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, 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 prevent the waste of water in the Aquifer; and

WHEREAS, under Sections 1.01, 1.11, 1.14 and 1.26A of the Act, the EAA is authorized to implement programs designed to protect threatened and endangered species associated with the Aquifer; 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, Paragraph E of Incidental Take Permit No. TE63663A-1 (“ITP”) issued by the U.S. Fish and Wildlife Service to the EAA, the City of New Braunfels, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System, and Texas State University (“Permittees”), requires the Permittees to comply with the terms and conditions contained in the Edwards Aquifer Habitat Conservation Plan (“EAHCP”); and

WHEREAS, the EAHCP requires, among other things, the Permittees to implement various Conservation Measures intended to minimize or mitigate the impact of the use of groundwater withdrawn from the Aquifer on threatened and endangered species associated with the Aquifer and contribute to the recovery of such species; and

WHEREAS, a part of the EAHCP is that certain Funding and Management Agreement

("FMA"), effective January 1, 2012, that provides the terms of the rights and duties of the Permittees for managing and funding the implementation of the EAHCP, and the terms of the Adaptive Management Process; and

WHEREAS, Section 6.1 of the FMA requires each Permittee, including the EAA, to submit to the EAA a Program Funding Application ("PFA") to provide funding from the EAA to implement each Permittee's respective Conservation Measures, and such PFAs are required to be approved by the Board of Directors ("Board") of the EAA; and

WHEREAS, subject to certain limitations, Subsection 7.1.2 of the EAHCP and Section 3.2 and Article 5 of the FMA obligate the EAA to fund the Conservation Measures and Program Activities to be implemented by the Permittees; and

WHEREAS, pursuant to Section 6.1 of the FMA, the Permittees filed with the EAA EAHCP 2023 PFAs seeking funding for the Conservation Measures and Program Activities assigned to each respective Permittee under the EAHCP; and

WHEREAS, the EAA staff has reviewed each PFA and determined that each is complete and meets the approval criteria in Subsection 6.1.3 of the FMA, and recommends to the Board that the PFAs be approved as filed; and

WHEREAS, Article 10.02(b) of the EAA's Bylaws requires that contracts whose value exceeds \$100,000 be approved by a written resolution; and

WHEREAS, the total amount to be paid to the Permittees under the terms of the underlying interlocal contract to which the PFAs approved herein will be attached as provided below in Recital 5 will exceed \$100,000; and

WHEREAS, the underlying template interlocal contracts to which the PFAs approved herein will be attached were reviewed by the EAA's legal counsel prior to Board approval; and

WHEREAS, the EAA's Finance-Administrative Committee, on October 25, 2022, voted to recommend the Board adopt a resolution and order approving the 2023 PFAs submitted by each Permittee; and

WHEREAS, a regular meeting of the Board 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 of the Board were present and constituted a quorum; 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, the Board hereby finds that each PFA meets the approval criteria in Subsection 6.1.3 of the FMA as recommended by the EAA staff; and

WHEREAS, pursuant to Sections 4.7, 5.2.2, and 6.1.4 of the FMA, the Board additionally finds that there are sufficient funds within the Edwards Aquifer HCP Fund<sup>1</sup> to provide funding to each Permittee in the amount requested in their respective PFAs; and

WHEREAS, it is in the public interest that the PFAs be approved and funding be provided to implement the terms and conditions of the EAHCP in accordance with the FMA and the ITP.

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 EAHCP FY2023 Program Funding Applications submitted by the Edwards Aquifer Authority, in an amount not to exceed \$19,844,684; the City of New Braunfels, in an amount not to exceed \$1,055,385; and the City of San Marcos and Texas State University, in an amount not to exceed \$1,461,425, for the purpose of implementing the Conservation Measures and Program Activities as required by the EAHCP, for the period January 1, 2023 through December 31, 2023.
- Section 3. Pursuant to Subsection 6.1.5 of the FMA, the General Manager is directed to provide notice to the Permittees in writing of the Board's decision on the Program Funding Applications.
- Section 4. Pursuant to Article IV.A. of Interlocal Contract No. 20-024-TES between the Edwards Aquifer Authority and the City of New Braunfels for Edwards Aquifer Habitat Conservation Plan Program Funding approved by this Board on October 13, 2020, the City of New Braunfels' 2023 Program Funding Application shall be considered to be a part of Contract No. 20-024-TES for all purposes and attached as Exhibit A to that contract. Also, pursuant to Article IV.A. of Interlocal Contract No. 20-025-TES between the Edwards Aquifer Authority and the City of San Marcos and Texas State University for Edwards Aquifer Habitat Conservation Plan Program Funding approved by this Board on October 13, 2020, the 2023 Program Funding Application filed by these entities shall be considered to be a part of Contract No. 20-025-TES for all purposes and attached as Exhibit A to that contract. The General Manager is authorized to release payment to the Permittees under this Resolution and Order in accordance with the terms and conditions as set out in the above-referenced EAHCP program funding contracts.

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<sup>1</sup> In the FMA, this fund is referred to as the "HCP Program Account." See FMA § 1.1.27.

Section 5. 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 8<sup>th</sup> DAY OF NOVEMBER 2022.

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Luana Buckner  
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