

EDWARDS AQUIFER AUTHORITY
State of Texas

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

P100-154	Union Pacific Railroad Company)
(BE00055))

**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 Union Pacific Railroad Company (“Applicant”). As set forth below, the General Manager of the Edwards Aquifer Authority (“EAA”) issued notice that the Conversion Application would be considered. 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 presentation of the General Manager of the EAA, and the arguments and presentations of 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 the facts necessary to grant the Conversion Application have been established by convincing evidence.

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 March 15, 2001, Henry C. Verstraeten, Jr., Trustee of the Verstraeten Parents Farm Trust, was granted Initial Regular Permit No. (“IRP”) 2001-BE00055 (P100-154) by the EAA in the amount of 699.600 acre-feet/year (“AF/yr”) (349.800 AF/yr Base Irrigation Groundwater (“BIG”) and 349.800 AF/yr Unrestricted Irrigation Groundwater (“UIG”)) based on the irrigation of 349.800 acres of land during the historical period (June 1, 1972 – May 31, 1993).

2. On May 21, 2007, due to the sale of land and water rights from Henry C. Verstraeten, Jr., Trustee of the Verstraeten Parents Farm Trust, to 8091 Pearsall Road EAT LLC, a Delaware limited liability company, pursuant to Warranty Deed dated April 13, 2006, and recorded as Document # 20060085957, Volume 12061, pages 356-361, Official Public Records, Bexar County, Texas, the EAA approved the transfer of ownership of P100-154 (BE00055) from Henry C. Verstraeten, Jr., Trustee of the Verstraeten Parents Farm Trust, to 8091 Pearsall Road EAT LLC.

3. On May 5, 2008, due to the sale of land and water rights from 8091 Pearsall Road EAT LLC to Applicant pursuant to General Warranty Deed dated January 12, 2007, and recorded as Document # 20070017493, Volume 12652, pages 59-63, Official Public Records, Bexar County, Texas, the EAA approved the transfer of ownership of P100-154 (BE00055) from 8091 Pearsall Road EAT LLC to Applicant.

4. On October 15, 2015, Applicant filed a Conversion Application with the EAA at the official business offices located at 900 E. Quincy, San Antonio, Texas. Applicant seeks issuance of an order granting the Conversion Application by converting 349.800 AF/yr of BIG to

UIG.

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

6. By letter dated October 21, 2015, the General Manager notified Applicant that he had determined that the Application was administratively complete.

7. After determining that the Conversion Application was administratively complete, the General Manager conducted a technical review of the Application.

8. After completing the technical review of the Conversion Application, the General Manager prepared a Technical Summary wherein he stated that because of the uniqueness of the facts contained within the Conversion Application, he was forwarding the Conversion Application to the EAA Board of Directors for consideration without a recommendation.

9. On July 12, 2016, Applicant waived the requirement that the General Manager provide 30 days written notice by United States mail to Applicant stating a technical review of the Conversion Application was complete, and providing Applicant with a copy of the proposed action and Technical Summary in support thereof, as no recommendation was being made.

10. On July 26, 2016, the EAA's Permits and Enforcement Committee was provided a presentation on the Conversion Application and following that presentation and the arguments and presentations of Applicant's representative, the committee recommended the Board approve the Conversion Application.

11. The Docket Clerk of the EAA scheduled before the Board a presentation by the

General Manager on the Conversion Application. The presentation occurred at the regular meeting of the Board held on August 9, 2016, 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.

12. 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.

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

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

15. Applicant has filed with the EAA all applicable reports.

16. The place of use set out in Regular Permit P100-154 (BE00055) 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 General Warranty Deed dated 1/12/2007, as recorded with Clerk as Document # 20070017493, Volume 12652, Pages 59-63, Official Public Records, Bexar County, Texas.

17. A change in land use has occurred relative to the historically irrigated lands constituting the place of use set out in Regular Permit P100-154 (BE00055) such that these lands are no longer practicable to farm. The historically irrigated land that is the subject of the

Application is located within a city's corporate limits or the city's extraterritorial jurisdiction; the land is sufficiently bordered by development; and the historically irrigated land has not been irrigated for 5 or more years.

18. A map showing the location of the 77.469 historically irrigated acres is attached as Exhibit A.

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

20. Applicant is in compliance with the Act, the EAA's rules, other permits, and orders of the Board.

21. Applicant is the owner of the land to which the BIG that is the subject of the Conversion Application is appurtenant.

22. Applicant was not required to submit a new survey of the historically irrigated acres constituting the place of use set out in Regular Permit P100-154 (BE00055).

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 P100-154 (BE00055) such

that these lands are no longer practicable to farm. Specifically, the land is deemed no longer practicable to farm because it has not been irrigated for more than 5 years and Applicant demonstrated that the land met the following two limitations:

A. the land is within a city's extraterritorial jurisdiction; and

B. the land is sufficiently bordered by development. Applicant met the criteria related to this limitation due to the unique confluence of facts. The land that is the subject of the Application has been absorbed within the larger footprint of the Union Pacific Railroad's Intermodal as it contains a rail line and an associated roadway that allows for inspection and maintenance of Union Pacific rail cars. In addition, while the historically irrigated lands have not been rezoned to industrial use, the owner of the land does possess the power of condemnation and is unwilling to allow concentrated irrigation farming and the associated use of pesticides that accompany such activity. Due to the nature of Applicant's business, and the unique powers associated with the entity, the historically irrigated lands cannot be isolated from other, adjoining parcels of land that are also owned and operated by Applicant. A unity of ownership exists between all parcels associated with Applicant's Intermodal and its adjoining rail lines, therefore, while the encroachment of development has been performed by Applicant upon itself, the historically irrigated lands are sufficiently bordered by development (in this case, entire absorption by a railroad company and the limitations associated with such an entity and its business) to make the lands 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 349.800 AF/yr of BIG to UIG associated with Regular Permit P100-154 (BE00055) 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 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 9TH DAY OF AUGUST, 2016.

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
General Counsel