



SIERRA CLUB

Mr. Roland Ruiz, General Manager
Edwards Aquifer Authority
900 E. Quincy
San Antonio, TX 78215

October 19, 2016

Re: Proposed FY 2017 EAA Budget

Dear Mr. Ruiz:

These comments on the proposed Edwards Aquifer Authority (EAA) budget are submitted on behalf of the National Wildlife Federation, the Lone Star Chapter of the Sierra Club, and Dianne Wassenich, who is a member of the EAHCP Stakeholder Committee. We appreciate the opportunity to provide comments on the proposed budget and request that they be shared with the Board.

We are opposed to the proposal, within the proposed 2017 budget, to draw down the “Fund Balance” in the HCP Program Account. Doing so would be inconsistent with both the spirit and the specific terms of the Funding and Management Agreement (FMA) that came out of the multi-year Edwards Aquifer Recovery Implementation Program, which resulted in the Edwards Aquifer Habitat Conservation Program (EAHCP). The FMA is quite specific in addressing when funds from the “Fund Balance” may be used to reduce “Program Aquifer Management Fees” in the manner proposed here. That reduction is only authorized when there is an “Excess Fund Balance.” Because there currently is no “Excess Fund Balance,” the use of a portion of the “Fund Balance” as currently proposed is not consistent with the FMA or with the understanding on which the EAHCP was finally approved.

Subsection 5.2.1 of the FMA provides that the use of any “Fund Balance” for “Program Expenditures” is governed by Subsection 5.5.4 of the FMA. Subsection 5.5.4 only authorizes the use of the “Excess Fund Balance” portion of the “Fund Balance” for use to reduce the “Annual Funding Obligation” of the EAA below the levels set out in Section 5.2, including 5.2.2. The FMA defines “Excess Fund Balance” as the amount of “Fund Balance” in excess of the \$46 million cap. Because the current Fund Balance is expected to be about \$33 million—much less than \$46 million—there is no “Excess Fund Balance” available for reducing “Program Aquifer Management Fees” at this time. Accordingly, as provided by Subsection 5.2.2 of the FMA, the EAA is obligated to assess “Program Aquifer Management Fees” sufficient to meet the “Annual Funding Obligation,” which, as relevant in current circumstances, is the amount of the “Annual Program Budget,” as those terms are defined in the FMA. Instead, the proposed budget would provide for “Program Aquifer Management Fees” in an amount about \$3.7 million less than the “Annual Program Budget” of \$17.3 million.

Section 3.2 of the FMA obligates the EAA to fully fund implementation of the Program, up to the limits set out in Table 7.1 of the Edwards Aquifer Habitat Conservation Plan, as those limits are adjusted based on a 2% annual increase from the 2013 Annual Funding Obligation. In its proposed budget, the EAA has indicated its intent to rely on a combination of a reduced amount of "Program Aquifer Management Fees" and the use of about \$3.7 million from the "Fund Balance" to cover the "Annual Program Budget." Because there is no "Excess Fund Balance" available to make up the difference and because the "Annual Program Budget" does not exceed the cap set out in Table 7.1, as adjusted, the FMA does not authorize reducing the amount of "Program Aquifer Management Fees" below the amount needed to fund the "Annual Program Budget." Nothing in Subsection 5.5.4 authorizes, or even suggests, that any portion of the "Fund Balance" below the "Fund Balance Cap" may be used for that purpose. Instead, 5.5.4 indicates that only an "Excess Fund Balance" may be used to reduce "Program Aquifer Management Fees" under these circumstances.

The FMA was carefully crafted to provide for the security of a "Fund Balance" that will be available to be drawn upon during drought conditions when implementation costs, particularly for the VISPO and ASR programs, will be much higher than average. This was done in recognition of the difficulty, both politically and practically, of raising "Program Aquifer Management Fees" to a very high level during drought conditions when pumpers are facing significant pumping curtailments. By ensuring a secure Fund Balance, the FMA allows for "Program Aquifer Management Fees" to be assessed at a leveled amount, providing for predictability for pumpers while still ensuring that widely varying program costs can be reliably met. The EAA's proposed budget is inconsistent with that basic premise of the EAHCP.

Although not relevant to current circumstances, the commenting parties do believe that, if the EAA were facing serious drought conditions today resulting in an "Annual Program Budget" that exceeded the adjusted Table 7.1 limit, the FMA would allow for "Fund Balances" below the cap to be used to cover the difference. In that instance, the EAA could collect "Program Aquifer Management Fees" at the adjusted Table 7.1 level and draw upon the "Fund Balance" consistent with Section 5.5.4 because the EAA would not have reduced its "Annual Funding Obligation" below otherwise applicable limits. However, the "Fund Balance" is not available under current circumstances to reduce "Program Aquifer Management Fees" below the levels needed to cover the current "Annual Program Budget."

The commenting parties strongly urge the EAA to fully honor the letter and spirit of the FMA and the EAHCP and include in the 2017 Budget "Program Aquifer Management Fees" in an amount at least sufficient to cover the Annual Program Budget. We continue to believe that the best interests of the EAA and all affected parties will be served by doing so and by avoiding any suggestion that funding for the EAHCP may not be available as originally envisioned in the EAHCP process.

Sincerely,

A handwritten signature in dark ink, reading "Myron J. Hess". The signature is fluid and cursive, with the first name "Myron" and last name "Hess" clearly legible.

Myron J. Hess
Director, Texas Water Programs/Counsel
National Wildlife Federation (hess@nwf.org; 512-610-7754)