

RESOLUTION AND ORDER NO. 11-16-863

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING A CONTRACT BETWEEN THE EAA AND THE U. S. FISH AND WILDLIFE SERVICE, REGION 2, FISH AND AQUATIC CONSERVATION OFFICE, U.S. DEPARTMENT OF INTERIOR, TO PROVIDE AND OPERATE OFF-SITE REFUGIA UNDER SECTIONS 5.1.1 AND 6.4 OF THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN, IN AN AMOUNT NOT TO EXCEED \$18,876,267, FOR THE PERIOD OF JANUARY 1, 2017 THROUGH MARCH 31, 2028; AND TO AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE CONTRACT.

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 to increase the recharge of, and prevent the waste or pollution 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 federally-listed threatened and endangered species associated with the Aquifer; and

WHEREAS, under Section 1.11(d)(2) of the Act, and other applicable law, the EAA may enter into contracts; 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 ("ESA"); and

WHEREAS, under Section 1.27 of the Act, the EAA may conduct research; and

WHEREAS, under Section 49.211(a), Texas Water Code, the EAA has the functions, powers, authority, rights, and duties that will permit it to accomplish the purposes for which it was created or the purposes authorized by the constitution, the Texas Water Code, or any other law; and

WHEREAS, under Section 49.213(b), Texas Water Code, the EAA may enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by the EAA; and

WHEREAS, under Section 49.213(c)(7), Texas Water Code, the EAA may enter into contracts with persons or any public or private entities on the terms and conditions the Board of Directors ("Board") of the EAA may consider desirable, fair, and advantageous for, among other things, the exercise of any rights, powers, and duties granted to the EAA; and

WHEREAS, Tex. Att’y Gen. Op. No. KP-0008 (2015) Authorizes the EAA to enter into a services contract with the Service for refugia services; and

WHEREAS, Paragraph E of Incidental Take Permit No. TE63663A-1 ("ITP") issued by the Service under Section 10(a) of the ESA (16 U.S.C. § 1539(a)) 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, Section K of the ITP requires that the EAA “support, and coordinate with the U.S. Fish and Wildlife Service (Service) on, a series of off-site refugia (Section 6.4 of the HCP)”; that such “support of the refugia will augment the existing financial and physical resources of the Service and provide supplementary resources for appropriate research activities, as necessary, to house and protect adequate populations of Covered Species and expanded knowledge of their biology, life histories, and effective reintroduction techniques”; and that “[t]he use of this support will be limited to the Covered Species in the EARIP HCP; and

WHEREAS, Sections 5.1.1 and 6.4 of the EAHCP require the EAA to provide for and fund an off-site refugia, salvage efforts as may be necessary, and refugia-related research activities; and

WHEREAS, this Contract provides that the USFWS is engaged to implement the Refugia Program on behalf of the EAA with funding to be provided by the EAA; and

WHEREAS, Section 7 of the Fish and Wildlife Act of 1956 Act (16 U.S.C. 742f(a)(4)) authorizes the USFWS to provide for the development, advancement, management, conservation, and protection of the fisheries resources, and to take steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources, including through research; and

WHEREAS, the P.L. 106-113 Appropriations Act for the Department of the Interior and Related Agencies, 2000 authorizes the USFWS to provide reimbursable specialized or technical services to State or local governments; 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, 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 EAHCP refugia-related activities; and

WHEREAS, the EAA’s Research and Technology Committee, on October 25, 2016, voted to recommend the Board adopt this Resolution and Order; 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 Service, under the Contract will exceed \$100,000; and

WHEREAS, the Contract was reviewed by the EAA's legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board was held on November 8, 2016, at 3:00 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, it is in the public interest that the EAA approve the Contract.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS 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 Contract No. 16-822-HCP with U.S. Fish and Wildlife Service in an amount not to exceed \$18,876,267, to provide and operate refugia under Sections 5.1.1 and 6.4 of the EAHCP; and
- Section 3. The General Manager is authorized to execute and deliver the Contract attached hereto and release payment as required by the Contract.
- Section 4. 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 NOVEMBER 8, 2016.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique Valdivia
Secretary, Board of Directors

APPROVED AS A FORM:



Darryl Alan Frownfelter
General Counsel