

RESOLUTION AND ORDER NO. 07-17-873

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING AN AMENDMENT TO THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN FY2017 PROGRAM FUNDING APPLICATION OF THE EDWARDS AQUIFER AUTHORITY BY INCREASING THE 2017 FUNDING REQUEST FROM \$20,576,826, TO \$21,077,826 FOR THE PURPOSE OF PROVIDING ADDITIONAL FUNDING AND IMPLEMENTING THE VISPO AND ASR CONSERVATION MEASURES.

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 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 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, on March 18, 2013, Incidental Take Permit No. TE63663A-1 ("ITP") issued by the U.S. Fish and Wildlife Service ("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"), under Section 10(a) (16 U.S.C.A. § 1539(a)) of the ESA, became effective; and

WHEREAS, Paragraph E of the ITP 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to implement various Conservation Measures intended to minimize or mitigate the impact of the use of groundwater withdrawn from the Aquifer on threatened and endangered species associated with the Aquifer and contribute to the recovery of such species, and the conducting of certain adaptive management activities to enhance the effectiveness of the EAHCP; 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 ("Application") to provide funding from the EAA to implement each Permittee's respective Conservation Measures, and such Applications are required to be approved by the Board of Directors ("Board") of the EAA; and

WHEREAS, pursuant to Section 6.1 of the FMA, on November 8, 2016, the Board approved the EAA's EAHCP 2017 Application in the amount of \$16,147,247 seeking funding for the Conservation Measures and Program Activities assigned to the EAA in Chapters 5 and 6 of the EAHCP; and

WHEREAS, on March 14, 2017, the Board approved an amendment to the EAA's EAHCP 2017 Application to the amount of \$20,576,826 to provide necessary funding for the EAA's Refugia Program and operations; and

WHEREAS, the original Application, as amended, included \$2,208,000 for the Voluntary Irrigation Suspension Program Option Program ("VISPO"); and

WHEREAS, in light of a funding shortage resulting from a change in contract terms and an increase in payments which necessitates increasing the budget for VISPO for FY 2017 by an additional \$1,000, for a new total of \$2,209,000 for 2017; and

WHEREAS, the EAA desires to increase the amount of funding required for 2017 activities for VISPO in this amount; and

WHEREAS, the original Application, as amended, included \$5,500,000 for the Aquifer Storage and Recovery ("ASR") Program; and

WHEREAS, in light of insufficient funds for Operations and Maintenance associated costs for ASR, the budget will be increased for the ASR Program for FY 2017 by an additional \$500,000, for a new total of \$6,000,000 for 2017; and

WHEREAS, the EAA desires to increase the amount of funding required for 2017 activities for the ASR Program in this amount; and

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

WHEREAS, the Board hereby finds that the amended Application meets the application approval criteria Subsection 6.1.3 of the FMA as recommended by the EAA staff; and

WHEREAS, the Board has amended the Edwards Aquifer HCP Fund¹ budget and therefore finds that there are sufficient funds to provide funding to the EAA in the amount requested in the amended Application; 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 to provide funding to the EAA in the amount requested in the amended Application; and

WHEREAS, the EAA's Finance Committee, on June 27, 2017 voted to recommend the Board adopt a resolution and order approving the amended 2017 Application submitted by the

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

EAA; and

WHEREAS, a regular meeting of the Board was held on July 11, 2017, 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 was 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 Application be approved and funding be provided to implement the terms and conditions of the EAHCP in compliance 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 an amendment to the Edwards Aquifer Habitat Conservation Plan FY2017 Program Funding Application of the Edwards Aquifer Authority, by increasing the funding request from \$20,576,826 to \$21,077,826; for the purpose of funding the Voluntary Irrigation Suspension Program Option and the Aquifer Storage and Recovery Conservation Measures.
- 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 Application.
- 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 11th DAY OF JULY, 2017.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique Valdivia
Secretary, Board of Directors

APPROVED AS FORMAL

Darcy Alan Brownfelter
General Counsel