

**EDWARDS AQUIFER AUTHORITY**  
**State of Texas**

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

**P104-517      Fry Homes, Inc.**  
**(UV00555)**

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**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 (“Application”) of Fry Homes, Inc. (“Applicant”). As set forth below, the General Manager of the Edwards Aquifer Authority (“EAA”) issued notice of his proposed action on the Application. The Board of Directors (“Board”) of the EAA, after having reviewed and considered the summaries of the evidence for the Application as contained in the materials in the Board Packet, the arguments and presentation of the General Manager of the EAA, and the arguments and presentations of the 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:

1.      The facts necessary to support the General Manager’s proposed action to grant the Application have been established by convincing evidence; and
  
2.      The General Manager’s proposed action is entitled to prevail with reference to the above-styled and numbered application.

Accordingly, the Board is of the opinion and finds that the 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 November 15, 2005, the Sterling Trust Company, Trustee FBO Harold T. duPerier, III, Account Number 041477 (“Sterling Trust”), was granted an amended Initial Regular Permit P102-001 (UV00555) by the EAA, thereby superseding the previously issued permit of December 11, 2001, in the amount of 90.000 acre-feet/year (“AF/yr”) (90.000 AF/yr Base Irrigation Groundwater (“BIG”) and 0.000 AF/yr Unrestricted Irrigation Groundwater (“UIG”)), based on the ownership and irrigation of 90.000 acres of historically irrigated lands (“HIL”) out of a 257.00-acre tract during the historical period (June 1, 1972 – May 31, 1993) by its predecessor in interest applicant – the Estate of Farel Warren and heirs. The 90 AF/yr of UIG associated with this permit had been previously conveyed to the City of Uvalde on or about January 28, 2003.

2. On August 31, 2009, due to the sale of the 90.000 acres of HIL by Sterling Trust, pursuant to Warranty Deed dated April 1, 2009, and recorded as Document # 2009001188, Official Public Records, Uvalde County, Texas; and the approval on or about July 20, 2009 of an Irrevocable Designation of Historically Irrigated Lands Pertaining to Edwards Aquifer Groundwater Rights, recorded as Document # 2009002477, Official Public Records, Uvalde County, Texas, the EAA recognized the transfer of ownership of Regular Permit P102-001 (UV00555) in the amount of 90.000 AF/yr BIG to Innovation Ranch Investments, Ltd.

3. On September 28, 2009, due to the sale of 82.830 acres out of the 90.000 acres of HIL by Innovation Ranch Investments, Ltd., pursuant to Warranty Deed with Vendor’s Lien dated May 26, 2009, and recorded as Document # 2009003264, Official Public Records, Uvalde

County, Texas, the EAA issued new Regular Permit P104-517 (UV00555) in the amount of 82.830 AF/yr BIG to Fry Homes, Inc.

4. On March 9, 2010, the EAA approved a Conversion of Base Irrigation Groundwater Rights due to a change in land use, and reissued Regular Permit P104-517 (UV00555) in the amount of 82.830 AF/yr (39.860 AF/yr of BIG and 42.970 AF/yr of UIG) to Fry Homes, Inc.

5. On June 12, 2017, the Applicant filed the 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 Application to convert 28.972 AF/yr of BIG to UIG.

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

7. By letter dated June 12, 2017, the General Manager notified the Applicant that he had determined that the Application was administratively complete.

8. After determining that the Application was administratively complete, the General Manager conducted a technical review of the Application for the purpose of determining if the Application should be granted or denied, in whole or in part.

9. After completing the technical review of the Application, the General Manager concluded that he should recommend to the Board that the Application be granted in whole.

10. In conjunction with the proposed action, the General Manager prepared a Technical Summary.

11. On July 6, 2017, the General Manager provided written notice by United States mail to Applicant that technical review of the Application was complete, and provided Applicant with a copy of the proposed action and Technical Summary in support thereof.

12. The Docket Clerk of the EAA scheduled before the Board a presentation by the General Manager on the Application, his proposed action, and the proposed issuance of an amended Regular Permit in accordance therewith. The presentation occurred at the regular meeting of the Board held on August 8, 2017, at the official offices of the Edwards Aquifer Authority, located at 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. 13. The 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.

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

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

16. The Applicant has filed with the EAA all applicable reports.

17. The place of use set out in Regular Permit P104-517 (UV00555) was irrigated land during the historical period. A description of the irrigated lands is as follows:

The tract(s) of land described in Warranty Deed with Vendor's Lien dated 5/26/2009, as recorded with the Clerk as Document # 2009001796, and more specifically described as 82.830 acres out of a 90.00-acre tract more fully described Irrevocable Designation of Historically Irrigated Lands Pertaining to Edwards Aquifer Groundwater Rights as recorded with the Clerk as Document # 2009002477 Official Public Records, Uvalde County, Texas.

18. A change in land use has occurred relative to the historically irrigated lands constituting the place of use set out in Regular Permit P104-517 (UV00555) such that these lands are no longer practicable to farm. Specifically, the historically irrigated land that is the subject of the Application has been physically developed such that at least 75% of the land meets the characteristics of development. Therefore, in accordance with EAA Rule 711.342(6)(A) (Basis for Granting Conversion Applications), the 28.972 acres, which were historically irrigated, qualify for conversion to UIG.

19. A map showing the location of the 28.972 acres is attached as Exhibit A.

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

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

22. The Applicant is the owner of the land to which the BIG that is the subject of the Application is appurtenant.

23. The Applicant is not required to submit a new survey of the HIL constituting the place of use set out in Regular Permit P104-517 (UV00555).

### **CONCLUSIONS OF LAW**

1. Because the Application seeks to convert BIG 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 Conservation Application meets the requirements of Section 711.342(6)(A) 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 P104-517 (UV00555) such that these lands are no longer practicable to farm.

3. The Application otherwise complies with the Act and the EAA's Rules.

4. Accordingly, the Application should be granted in accordance with this Final Order hereby converting 28.972 AF/yr of BIG to UIG associated with Regular Permit P104-517 (UV00555) 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 Application is hereby **GRANTED** as follows:

1. The General Manager is directed to advise the 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 8<sup>TH</sup> DAY OF AUGUST, 2017.

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**LUANA BUCKNER**  
Chairman, Board of Directors  
Edwards Aquifer Authority

**ATTEST:**

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**ENRIQUE VALDIVIA**  
Secretary, Board of Directors  
Edwards Aquifer Authority

**APPROVED AS TO FORM:**

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**DARCY ALAN FROWNFEITER**  
General Counsel