

RESOLUTION AND ORDER NO. 12-18-920

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING FORBEARANCE AGREEMENTS OF PERMITTED EDWARDS GROUNDWATER RIGHTS FROM CERTAIN PERMIT HOLDERS AS LISTED HEREIN TO THE EAA RELATIVE TO SPRINGFLOW PROTECTION ASSOCIATED WITH THE AQUIFER STORAGE AND RECOVERY PROJECT OF THE SAN ANTONIO WATER SYSTEMS IN SUPPORT OF THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN, AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE FORBEARANCE AGREEMENTS.

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 Section 1.11(d)(2) of the Act, 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; and

WHEREAS, under Section 1.14(a)(6), and (7) of the Act, the EAA is required to protect aquatic and wildlife habitat, and protect species that are designated as threatened or endangered under federal or state law; and

WHEREAS, under Section 1.14(h) of the Act, the EAA is required to implement a plan to ensure that springflows at Comal Springs and San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law; and

WHEREAS, under Section 1.26A of the Act, the EAA is required to develop and implement a recovery implementation program for the threatened and endangered species associated with the Aquifer; and

WHEREAS, on March 18, 2013, the U.S. Fish and Wildlife Service issued Incidental Take Permit No. TE63663A-1 ("ITP"), as amended, to the EAA, among others, under Section 10(a) (16 U.S.C. § 1539(a)) of the federal Endangered Species Act of 1973; and

WHEREAS, accompanying the application for the ITP was a Habitat Conservation Plan ("EAHCP") which, among other things, provides for the Conservation Measures identified in Chapter 5 of the EAHCP which are intended to minimize and mitigate to the maximum extent practicable the incidental take of threatened and endangered species covered by the EAHCP resulting from the implementation of the Covered Activities identified in Chapter 2 of the EAHCP; and

WHEREAS, Section 5.5.1 of the EAHCP requires the EAA to implement and administer a springflow protection program associated with the Aquifer Storage and Recovery Project of the San Antonio Water Systems ("ASR Project") wherein participating holders of groundwater withdrawal permits issued by the EAA will be compensated to forbear exercising their rights to make withdrawals from the Aquifer during times of certain droughts under such permits; and

WHEREAS, the EAA desires to enter into Springflow Protection Forbearance Agreements in support of the EAHCP; and

WHEREAS, Article 10.02(b) of the EAA Bylaws requires that any agreement, contract, or any other procurement instrument whose value exceeds \$100,000 be approved by a written resolution of the EAA Board of Directors ("Board"); and

WHEREAS, the template forbearance agreement upon which these Forbearance Agreements are based has been reviewed by the EAA legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board of the EAA was held on December 11, 2018, 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, the Board considered the Agenda Item that is the subject of this Resolution and Order; and

WHEREAS, a majority of the Directors were present and constituted a quorum of the Board; 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 enter into the Forbearance Agreements.

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 the Springflow Protection Forbearance Agreements associated with the ASR Project in support of the EAHCP as summarized below:

Permit No.	Owner Name	Acre-feet Forborne	Term (years)	Annual Cost	Total Cost
P101-788	Jack David Wardlaw and wife, Jessie Lem Wardlaw, Jack D. Wardlaw III, Mack M. Wardlaw, and William Chase Wardlaw	916.786	10	\$91,678.60	\$916,786.00
P101-966	OJR Farms, Inc.	749.200	10	\$74,920.00	\$749,200.00
P101-875	Mark C. Kelling	548.000	10	\$54,800.00	\$548,000.00
P104-939	Jana Lyda Mask	457.800	10	\$45,780.00	\$457,800.00
P105-037	Tierra Mireles Limited Partnership	424.060	10	\$42,406.00	\$424,060.00
P100-014	Jerry Kye Mask	407.000	10	\$40,700.00	\$407,000.00
P100-934	Weiblen Enterprises Ltd.	350.000	10	\$35,000.00	\$350,000.00
P105-121	Charles Fohn Family Investments, LLC	342.270	10	\$34,227.00	\$342,270.00
P100-232	Annie J. Halbardier	268.000	10	\$26,800.00	\$268,000.00
P101-965	James Ray Carnes, Jr.	225.000	10	\$22,500.00	\$225,000.00
P101-005	Thomas Boehme and wife Helene Mae Boehme	200.000	10	\$20,000.00	\$200,000.00
P102-015	Wilde Family Farms, Ltd.	195.500	10	\$19,550.00	\$195,500.00
P102-013	Wilde Family Farms, Ltd.	193.000	10	\$19,300.00	\$193,000.00
P100-273	Callaghan Road, Ltd.	192.700	10	\$19,270.00	\$192,700.00
P102-007	Wilde Family Farms, Ltd.	175.971	10	\$17,597.10	\$175,971.00
P102-012	Wilde Family Farms, Ltd.	140.000	10	\$14,000.00	\$140,000.00
P101-126	TJ Hondo Ranch, Ltd. and M4 Enterprises, LLC	102.000	10	\$10,200.00	\$102,000.00
P101-869	Lena Jo Davenport, as Trustee of the Lena Jo Davenport Revocable Trust	70.000	10	\$7,000.00	\$56,000.00
P100-925	Lyle N. Riff, Trustee of the Gertrude S. Riff Family Trust	60.000	10	\$6,000.00	\$60,000.00
P102-014	Wilde Family Farms, Ltd.	37.000	10	\$3,700.00	\$37,000.00
P100-455	WM Kenton Hammond and wife, Linda R. Hammond	30.000	10	\$3,000.00	\$30,000.00
P102-005	Wilde Family Farms, Ltd.	13.366	10	\$1,336.60	\$13,366.00
P100-564	James L. Persyn and wife, Ruth E. Persyn	11.500	10	\$1,150.00	\$11,500.00
P100-564	James L. Persyn and wife, Ruth E. Persyn	11.500	10	\$1,150.00	\$10,350.00
P103-391	New Fountain United Methodist Church Board of Trustees	4.000	10	\$400.00	\$4,000.00
P101-337	Carol Todd	1.000	10	\$100.00	\$1,000.00
P104-776	Church of Christ of New Braunfels	1.000	10	\$100.00	\$1,000.00

	TOTALS :	6,126.653		\$612,665.30	\$6,111,503.00
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Section 3. The General Manager is authorized to execute the above-listed Forbearance Agreements on behalf of the EAA, deliver fully executed copies of the Agreements to the Permit Holders referred to herein, and release payments as required by the Agreements.

Section 4. This Resolution and Order shall become effective from and after its adoption.

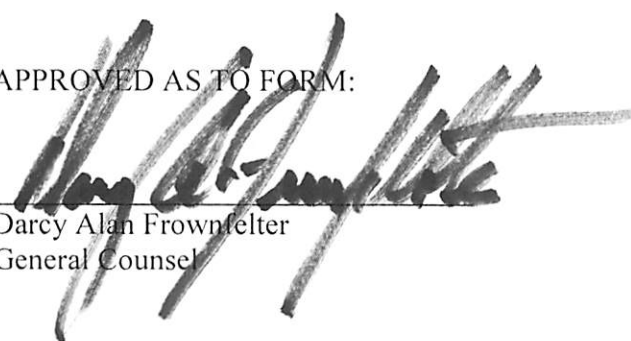
PASSED AND APPROVED BY THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS THIS 11TH DAY OF DECEMBER, 2018.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:



Darcy Alan Frownfelter
General Counsel