

EDWARDS AQUIFER AUTHORITY
State of Texas

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

P106-939 Continental Homes of Texas, L.P.
(BE00317)

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ORDER GRANTING APPLICATION
TO CONVERT BASE IRRIGATION GROUNDWATER PURSUANT TO THE
TEMPORARY INJUNCTION ISSUED IN UVALDE COUNTY UNDERGROUND WATER
CONSERVATION DIST. V. EDWARDS AQUIFER AUTH., NO. 2018-01-31972-CV

ON THIS DAY CAME ON TO BE HEARD the above-styled and numbered Application to Convert Base Irrigation Groundwater (“Conversion Application” or “Application”) of Continental Homes of Texas, L.P. (“Applicant”). As set forth below, the General Manager of the Edwards Aquifer Authority (“EAA”) issued notice of his proposed action on the Conversion Application. The Board of Directors (“Board”) of the EAA, after having reviewed and considered the summaries of the evidence for the Conversion 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 their 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 Conversion 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 Conversion Application should be **GRANTED**. In support of this Order, the Board makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. On January 31, 2001, Medina Valley Land & Cattle Inc. was granted Initial Regular Permit 2001-BE00317 (P100-658), by the EAA in the amount of 575.000 acre-feet/year (“AF/yr”) (287.500 AF/yr Base Irrigation Groundwater (“BIG”) and 287.500 AF/yr Unrestricted Irrigation Groundwater (“UIG”)), based on the ownership of 323.572 acres of land, of which 287.500 acres were irrigated during the historical period (June 1, 1972 – May 31, 1993).

2. On August 4, 2014, due to the purchase of 210.03-acre tract, containing 84.853 historically irrigated acres, pursuant to Correction Warranty Deed dated February 12, 2007, and recorded as Document # 20140095468, Official Public Records, Bexar County, Texas, the EAA issued Regular Permit P106-939 (BE00317) in the amount of 100.050 acre-feet/year (“AF/yr”) Base Irrigation Groundwater (“BIG”) to Charles Davis, Jr.

3. On September 13, 2016, due to the EAA’s Approval of an Irrevocable Designation of Historically Irrigated Lands Pertaining to Edwards Aquifer Groundwater Rights dated July 11, 2016, and recorded as Document # 20160134268, Official Public Records, Bexar County, Texas, the EAA reissued Regular Permit P106-939 (BE00317) in the amount of 100.050 AF/yr to Charles Davis, Jr.

4. On March 13, 2018, due to the sale of 109.964 acres of land containing 84.853 historically irrigated acres associated with BE00317, pursuant to Special Warranty Deed dated

January 16, 2008, and recorded as Document # 20180009680, Official Public Records, Bexar County, Texas, the EAA reissued Regular Permit P106-939 (BE00317) in the amount of 100.050 AF/yr to SA Given to Fly, LLC.

5. On October 1, 2018, due to the sale of 84.853 acres of land pursuant to Warranty Deed dated August 28, 2018, recorded as Document # 20180171354, Official Public Records, Bexar County, Texas, the EAA reissued Regular Permit P106-939 (BE00317) in the amount of 100.050 AF/yr to Continental Homes of Texas, L.P.

6. On November 6, 2018, the 38th Judicial District Court in Uvalde County, Texas, entered an Unopposed Order Modifying Temporary Injunction and Staying Proceedings Pending the 86th Texas Legislative Session in *Uvalde County Underground Water Conservation District v. Edwards Aquifer Authority*, No. 2018-01-31972-CV, which prohibits the EAA from authorizing any water rights converted from BIG to UIG rights as a result of a change in land use from being permanently transferred outside of the county where the BIG rights were initially permitted for the period that the court's Unopposed Order is in place.

7. On February 1, 2019, the Applicant filed a Conversion 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 Conversion Application by converting 100.050 AF/yr of BIG to UIG.

8. The Conversion 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.

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

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

11. By letter dated February 6, 2019, the General Manager notified the Applicant that he had determined that the Application was administratively complete.

12. After determining that the Conversion 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.

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

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

15. On May 1, 2019, the General Manager provided written notice by United States mail to the Applicant that technical review of the Conversion Application was complete and provided the Applicant with a copy of the proposed action and Technical Summary in support thereof.

16. On May 1, 2019, the EAA provided written notice to Applicant by United States mail, that Applicant's Conversion Application was scheduled for consideration at the regular

meeting of the Board on June 11, 2019, at the official offices of the Edwards Aquifer Authority, 900 E. Quincy, San Antonio, Texas.

17. The Docket Clerk of the EAA scheduled before the Board a presentation by the General Manager on the Conversion Application, his proposed action, and the proposed issuance of a Regular Permit in accordance therewith. The presentation occurred at the regular meeting of the Board held on June 11, 2019, 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 Order was duly and properly listed in the notice of public meeting.

18. 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.

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

20. The place of use set out in Regular Permit P106-939 (BE00317) was irrigated land during the historical period. A description of the irrigated lands is as follows:

The tract(s) of land more fully described in Warranty Deed dated 8/28/2018 as recorded with the Clerk as Document # 20180171354, Official Public Records, Bexar County, Texas; and the tract(s) of land more fully described in Irrevocable Designation of Historically Irrigated Lands Pertaining to Edwards Aquifer Groundwater Rights dated 7/11/2016 as recorded with the Clerk as Document # 20160134268, Volume 17966, Pages 1440 - 1454, Official Public Records, Bexar County, Texas.

21. In accordance with EAA Rule 711.342(6)(A) Basis for Granting Conversion Applications, the 84.853 historically irrigated acres qualify for conversion. 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. The well used to irrigate the historically irrigated land that is the subject of the application has demonstrated a purpose of use other than irrigation and is permitted for industrial use.

22. A map showing the location of the 84.853 acres is attached as Exhibit A.
23. The Applicant was not required to submit a groundwater conservation plan to the EAA.
24. The Applicant is in compliance with the Act, the EAA's rules, other permits, and orders of the Board.
25. The Applicant is the owner of the land to which the BIG that is the subject of the Conversion Application is appurtenant.
26. The Applicant was not required to submit a new survey of the historically irrigated acres.

CONCLUSIONS OF LAW

1. Because the Conversion Application seeks to convert BIG to UIG associated with a Regular Permit issued by the EAA, the Board of Directors of the EAA has jurisdiction over the Application.
2. The Conversion 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 the Regular Permit.

3. The Conversion Application otherwise complies with the Act and the EAA's Rules.
4. The EAA shall not approve the permanent transfer of rights converted from BIG to UIG as a result of a change in land use to a place of use outside of the county where the BIG rights were initially permitted during the period that the Unopposed Order Modifying Temporary Injunction and Staying Proceedings Pending the 86th Texas Legislative Session in *Uvalde County Underground Water Conservation Dist. v. Edwards Aquifer Auth.*, No. 2018-01-31972-CV (38th Dist. Ct., Uvalde Cty., Tex. Jan. 16, 2018) is in effect, although the EAA may approve the temporary transfer of such rights to a place of use outside of the county where the BIG rights were initially permitted.
5. Accordingly, the Conversion Application should be granted in accordance with this Order hereby converting 100.050 AF/yr of BIG to UIG associated with Regular Permit P106-939 (BE00317) 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 Conversion 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 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 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 Order, and the special conditions required to

implement Paragraph 4 of the Conclusions of Law, for presentation to the Chairman of the Board of Directors of the EAA for signature;

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 Order; and

4. during the period that the Unopposed Order Modifying Temporary Injunction and Staying Proceedings Pending the 86th Texas Legislative Session in *Uvalde County Underground Water Conservation Dist. v. Edwards Aquifer Auth.*, No. 2018-01-31972-CV (38th Dist. Ct., Uvalde Cty., Tex. Jan. 16, 2018) is in effect, the EAA may not approve a permanent transfer of rights converted from BIG to UIG by this Order to a place of use or point of withdrawal outside of the county where they were initially permitted, although the EAA may approve the temporary transfer of such rights to a place of use or point of withdrawal outside of the county where they were initially permitted.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS
AQUIFER AUTHORITY THIS 11TH DAY OF JUNE, 2019.

LUANA BUCKNER
Chairman, Board of Directors
Edwards Aquifer Authority

ATTEST:

ENRIQUE VALDIVIA
Secretary, Board of Directors
Edwards Aquifer Authority

APPROVED AS TO FORM:



DARCY ALAN FROWNFELETER
General Counsel