

RESOLUTION AND ORDER NO. 09-19-945

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING FORBEARANCE AGREEMENTS OF PERMITTED EDWARDS GROUNDWATER RIGHTS BETWEEN THE EAA AND CERTAIN PERMIT HOLDERS AS LISTED HEREIN FOR 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 THESE 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 ESA; 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, the EAA’s Permits/Enforcement Committee, on August 27, 2019, voted to recommend the Board approve the Forbearance Agreements listed below and provide authorization to the General Manager to execute the Forbearance Agreements; 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 total amount to be paid to the various permit holders under the Forbearance Agreements listed below will exceed \$100,000; and

WHEREAS, the template forbearance agreement upon which the Forbearance Agreements listed below 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 September 10, 2019 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 was 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
P101-829	Box K, Limited	750.000	9	\$75,000.00	\$675,000.00
P101-679	Box K, Limited	250.000	9	\$25,000.00	\$225,000.00
P102-182	Lilla Lee Rose	173.000	9	\$17,300.00	\$155,700.00
P101-387	Sylvia C. Binford	94.000	9	\$9,400.00	\$84,600.00
P107-240	Binford Farms, LLC	82.000	9	\$8,200.00	\$73,800.00
P105-132	Michael Edward Ehtle	72.183	9	\$7,218.30	\$64,964.70
P100-557	Kurt Eric Kunze	32.000	9	\$3,200.00	\$28,800.00
P102-208	Craig K. Garnett and Melissa N. Garnett	18.000	9	\$1,800.00	\$16,200.00
	Total	1,471.183		\$147,118.30	\$1,324,064.70

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 10TH DAY OF SEPTEMBER, 2019.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel