

RESOLUTION AND ORDER NO. 01-20-958

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 AND RATIFYING THE EXECUTION OF THE FORBEARANCE AGREEMENTS BY THE GENERAL MANAGER.

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, in order to optimize the number of Springflow Protection Forbearance Agreements that could be obtained during calendar year 2019, at its November 12, 2019, meeting, the EAA Board of Directors ("Board") authorized the General Manager to execute Springflow Protection Forbearance Agreements for the remainder of 2019 without Board approval by resolution and order; and

WHEREAS, in light thereof, the General Manager executed a number of such agreements without a written resolution and order from the Board; 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 January 14, 2020, 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, the Board duly considered and took action on the agenda item that is the subject of this Resolution and Order; 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	Transfer Amount	Term (years)	Annual Lease Cost	Total Lease Cost
P101-740	City of Uvalde	2,000.000	9	\$200,000.00	\$1,800,000.00
P102-018	Briscoe Ranch, Inc.	1,500.000	9	\$150,000.00	\$1,350,000.00
P102-024	McFadin Strube, LP	603.123	9	\$60,312.30	\$542,810.70
P100-029	Rio Perla Properties, L.P., a Texas limited partnership	560.000	7	\$56,000.00	\$392,000.00
P101-916	Scott G. Yanta and Kimberly Yanta	535.000	9	\$53,500.00	\$481,500.00
P102-083	Archie A. McFadin, Jr. and wife, Sarabeth McFadin	497.568	9	\$49,756.80	\$447,811.20
P106-611	McFadin Water, LP	417.495	9	\$41,749.50	\$375,745.50
P102-099	LEC Legacy, Ltd.	386.155	9	\$38,615.50	\$347,539.50
P101-088	Aelvoet Partners, Ltd.	364.794	9	\$36,479.40	\$328,314.60
P101-088	Aelvoet Partners, Ltd.	330.000	8	\$33,000.00	\$264,000.00
P102-098	LEC Legacy, Ltd.	155.845	9	\$15,584.50	\$140,260.50
P102-093	Marcus Pepper and Sheila Melissa Pepper	150.000	9	\$15,000.00	\$135,000.00
P100-125	R&B Ranch D'Hanis, Ltd., a Texas limited partnership	147.000	9	\$14,700.00	\$132,300.00
P101-818	Jill Marie Foster	143.983	9	\$14,398.30	\$129,584.70
P101-113	Richard C. Aelvoet and wife, Rose M. Aelvoet	125.000	9	\$12,500.00	\$112,500.00

P101-739	City of Uvalde	124.770	9	\$12,477.00	\$112,293.00
P100-381	13095 Ltd., a Texas Limited Partnership	122.000	9	\$12,200.00	\$109,800.00
P104-708	L. Carper Capt	100.000	9	\$10,000.00	\$90,000.00
P101-318	East Medina County Special Utility District	100.000	9	\$10,000.00	\$90,000.00
P101-808	City of Uvalde	77.143	9	\$7,714.30	\$69,428.70
P100-373	Joseph H. Nentwich, et al	50.000	9	\$5,000.00	\$45,000.00
P100-340	Florence Becker	49.200	9	\$4,920.00	\$44,280.00
P101-593	Concho Pearl Holdings, Ltd.	40.133	9	\$4,013.30	\$36,119.70
P107-513	L. Carper Capt	30.600	9	\$3,060.00	\$27,540.00
P104-005	Bernice Persyn, Amy Hammond Persyn, Julie Persyn, Esther Persyn, Ernest M. DeWinne Jr., Wayne D. DeWinnie, Shirley Ann Sarro, Diane Marie White, and Rebecca Suzanne Savage	24.000	9	\$2,400.00	\$21,600.00
P107-575	City of Uvalde	17.170	9	\$1,717.00	\$15,453.00
P104-279	Louis E. Capt	15.000	9	\$1,500.00	\$13,500.00
P102-101	Louis E. Capt	15.000	9	\$1,500.00	\$13,500.00
P108-202	Slate Creek Ranch, LLC	10.888	9	\$1,088.80	\$9,799.20
P100-505	San Antonio Museum of Art	9.000	9	\$900.00	\$8,100.00
P107-597	City of Uvalde	8.550	9	\$855.00	\$7,695.00
TOTALS:		8,709.417		\$870,941.70	\$7,693,475.30

Section 3. The Board of Directors hereby ratifies the General Manager's prior execution of the above-listed Forbearance Agreements on behalf of the EAA and directs the General Manager to 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.

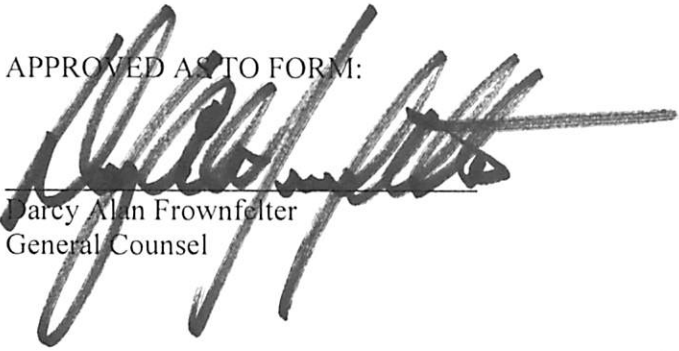
PASSED AND APPROVED BY THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS THIS 14TH DAY OF JANUARY 2019.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:



Darcy Alan Frownfelter
General Counsel