

RESOLUTION AND ORDER NO. 11-20-987

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING AN AMENDMENT TO THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN FY2020 PROGRAM FUNDING APPLICATION OF THE CITY OF NEW BRAUNFELS TO TRANSFER \$15,000 WITHIN THE CURRENTLY APPROVED APPLICATION BETWEEN BUDGET ITEMS BUT NOT TO EXCEED THE CURRENT FY2020 FUNDING REQUEST IN THE AMOUNT NOT TO EXCEED \$608,000, FOR THE PURPOSE OF PROVIDING ADDITIONAL FUNDING FOR THE CONSTRUCTION DESIGN OF STABILIZED WALK PATHS FOR THE RESTORATION PROJECT ALONG THE NEW BRAUNFELS UTILITIES HEADWATERS FACILITY PROPERTY FOR THE NATIVE RIPARIAN HABITAT RESTORATION CONSERVATION MEASURE.

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 prevent the waste of water in the Aquifer; and

WHEREAS, under Sections 1.01, 1.11, 1.14 and 1.26A of the Act, the EAA is authorized to implement programs designed to protect threatened and endangered species associated with the Aquifer; 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, on March 18, 2013, Incidental Take Permit No. TE63663A-1 (“ITP”) issued by the U.S. Fish and Wildlife Service (“Service”) to the EAA, the City of New Braunfels, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System, and Texas State University (“Permittees”), under Section 10(a) (16 U.S.C.A. § 1539(a)) of the ESA, became effective; and

WHEREAS, Paragraph E of the ITP requires the Permittees to comply with the terms and conditions contained in the Edwards Aquifer Habitat Conservation Plan (“EAHCP”); and

WHEREAS, the EAHCP requires, among other things, the Permittees to implement various Conservation Measures intended to minimize or mitigate the impact of the use of groundwater withdrawn from the Aquifer on threatened and endangered species associated with the Aquifer and contribute to the recovery of such species; and

WHEREAS, a part of the EAHCP is that certain Funding and Management Agreement (“FMA”) effective January 1, 2012, that provides the terms of the rights and duties of the Permittees for managing and funding the implementation of the EAHCP, and the terms of the Adaptive Management Process; and

WHEREAS, Section 6.1 of the FMA requires each Permittee, including the EAA, to submit to the EAA a Program Funding Application (“Application”) to provide funding from the EAA to implement each Permittee’s respective Conservation Measures, and such Application is required to be approved by the Board of Directors (“Board”) of the EAA; and

WHEREAS, subject to certain limitations, Subsection 7.1.2 of the EAHCP and Section 3.2 and Article 5 of the FMA obligate the EAA to fund the Conservation Measures and Program Activities to be implemented by the Permittees; and

WHEREAS, pursuant to Section 6.1 of the FMA, on November 12, 2019, the Board approved the EAHCP 2020 Application of the City of New Braunfels (“CONB”) in the original amount of \$583,000, seeking funding for the Conservation Measures and Program Activities assigned to CONB in Chapters 5 and 6 of the EAHCP for 2020; and

WHEREAS, pursuant to Section 6.1 of the FMA, on September 8, 2020, the Board approved an amendment to CONB’s EAHCP 2020 Application in the amount of \$25,000 to increase the approved 2020 funding request to an amount not to exceed \$608,000 for the Conservation Measures and Program Activities assigned to CONB in Chapters 5 and 6 of the EAHCP for 2020; and

WHEREAS, the approved 2020 Application, as amended, of CONB included \$15,000 for the Decaying Vegetation Removal/Dissolved Oxygen Management Conservation Measure and \$125,000 for the Native Riparian Habitat Restoration Conservation Measure; and

WHEREAS, in light of the need for construction design of stabilized walk paths for the restoration project along the New Braunfels Utilities Headwaters facility property, CONB desires to transfer funds from the Decaying Vegetation Removal/Dissolved Oxygen Management Conservation Measure budget amount to the Native Riparian Habitat Restoration Conservation Measure budget amount with no increase in the current total approved 2020 Application amount of \$608,000; and

WHEREAS, CONB desires to increase the amount of funding required for 2020 activities for the Native Riparian Habitat Restoration Conservation Measure by \$15,000, for a new total of \$140,000 for 2020; and

WHEREAS, CONB desires to decrease the amount of funding required for 2020 activities for the Decaying Vegetation Removal/Dissolved Oxygen Management Conservation Measure by \$15,000, for a new total of \$0 for 2020; and

WHEREAS, the EAA staff has reviewed the amended Application of CONB and determined that the application is complete and meets the approval criteria in Subsection 6.1.3 of the FMA, and recommends to the Board that the amended Application be approved as filed; and

WHEREAS, the Board hereby finds that the amended Application of CONB meets the approval criteria in Subsection 6.1.3 of the FMA as recommended by the EAA staff; and

WHEREAS, because no additional funding is sought by CONB in its 2020 Application by this amendment, the Board has no need to amend the Edwards Aquifer HCP Fund¹ budget to accommodate this amendment and, therefore, the Board finds that there are sufficient funds to provide the amount requested to be transferred between existing approved budget items in the currently approved Application, as amended; and

WHEREAS, pursuant to Sections 4.7, 5.2.2, and 6.1.4 of the FMA, the Board additionally finds that there are sufficient funds within the Edwards Aquifer HCP Fund to provide funding to CONB in the amount requested in the amended Application; and

WHEREAS, the EAA's Finance Committee, on October 27, 2020, voted to recommend the Board adopt a resolution and order approving the amended 2020 Application submitted by CONB; and

WHEREAS, Article 10.02(b) of the EAA's Bylaws requires that contracts whose value exceeds \$100,000 be approved by a written resolution; and

WHEREAS, the total amount to be paid to CONB under the terms of the underlying interlocal contract to which the amended Application approved herein will be attached as provided below in Recital 4 will exceed \$100,000; and

WHEREAS, the underlying template interlocal contract to which the amended Application approved herein will be attached was reviewed by the EAA's legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board was held on November 10, 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 the Governor's orders temporarily suspending certain provisions of Chapter 551 due to the Covid-19 pandemic; and

WHEREAS, an agenda item was duly listed in the notice of public meeting that is the subject of this Resolution and Order; and

¹ In the FMA, this fund is referred to as the "HCP Program Account." See FMA § 1.1.27.

WHEREAS, a majority of the Directors of the Board was present and constituted a quorum;
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 this Resolution and Order; and

WHEREAS, it is in the public interest that the amended Application be approved and funding be provided to implement the terms and conditions of the EAHCP in accordance with the FMA and the ITP.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THAT:

Section 1. The recitals set out above are found to be true and correct, and they are hereby adopted by the Board and are made a part of this Resolution and Order for all purposes.

Section 2. The Board hereby approves an amendment to the Edwards Aquifer Habitat Conservation Plan FY2020 Program Funding Application submitted by the City of New Braunfels, to transfer the amount of \$15,000 from the Decaying Vegetation Removal/Dissolved Oxygen Management Conservation Measure budget amount to the Native Riparian Habitat Restoration Conservation Measure budget amount for FY 2020 within the existing approved amount not to exceed \$608,000 for the purpose of providing additional funding for the Native Riparian Habitat Restoration Conservation Measure.

Section 3. Pursuant to Subsection 6.1.5 of the FMA, the General Manager is directed to provide notice to the Permittees in writing of the Board's decision on the amended Application.

Section 4. Pursuant to Article IV.A of Interlocal Contract No. 13-675-HCP between the Edwards Aquifer Authority and the City of New Braunfels for Edwards Aquifer Habitat Conservation Plan Program Funding approved by the Board on November 12, 2013, the City of New Braunfels' 2020 Program Funding Application, as amended, shall be considered to be a part of Contract No. 13-675-HCP for all purposes and attached as Exhibit A to that contract. The General Manager is authorized to release payment to the Permittee CONB under this Resolution and Order in accordance with the terms and conditions as set out in the above-referenced EAHCP program funding contract.

Section 5. This Resolution and Order shall become effective from and after its adoption.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS
AQUIFER AUTHORITY THIS 10th DAY OF NOVEMBER 2020.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel