

RESOLUTION AND ORDER NO. 04-21-997

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING AN AMENDMENT TO THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN FY2021 PROGRAM FUNDING APPLICATION OF THE EDWARDS AQUIFER AUTHORITY, INCREASING THE 2021 FUNDING REQUEST FROM AN AMOUNT NOT TO EXCEED \$11,867,625 TO AN AMOUNT NOT TO EXCEED \$11,912,392 FOR THE PURPOSE OF PROVIDING ADDITIONAL RESEARCH TO IMPLEMENT THE EAA'S REFUGIA PROGRAM FOR THE PERIOD OF JANUARY 1, 2021 THROUGH DECEMBER 31, 2021 AND APPROVING THE APPLICATION.

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") was 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. § 1539(a)) of the ESA, and 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groundwater withdrawn from the Aquifer on the federally-listed threatened and endangered species associated with the Aquifer and contribute to the recovery of such species; and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 Applications are 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 February 9, 2021, the Board approved the EAA’s EAHCP 2021 Application in the amended amount of \$11,867,625 to fund the Conservation Measures and Program Activities assigned to the EAA in Chapters 5 and 6 of the EAHCP for 2021; and

WHEREAS, the approved 2021 Application of the EAA, as amended, included \$1,177,340 for the Refugia Conservation Measure; and

WHEREAS, the reallocation of unspent funds in FY2020 to pay for continued and additional research efforts necessitates increasing the budget for the Refugia Conservation Measure for FY2021 by an additional \$44,767, for a new total of \$1,222,107 for 2021; and

WHEREAS, EAA staff has reviewed the amended Application of EAA 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 EAA meets the approval criteria in Subsection 6.1.3 of the FMA as recommended by the EAA staff; and

WHEREAS, the Board has amended the Edwards Aquifer HCP Fund¹ budget and, therefore, finds that there are sufficient funds to provide additional funding to EAA in the amount requested in the amended Application; 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 the EAA in the amount requested in the amended Application; and

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

WHEREAS, the EAA's Finance Committee, on March 23, 2021, voted to recommend the Board adopt a resolution and order approving the amended 2021 Application submitted by the EAA; and

WHEREAS, a regular meeting of the Board was held on April 13, 2021, 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 that is the subject of this Resolution and Order was duly listed in the notice of public meeting; and

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 compliance with the FMA and the ITP.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE EDWARDS AUTHORITY 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 an amendment to the Edwards Aquifer Habitat Conservation Plan FY2021 Program Funding Application submitted by the Edwards Aquifer Authority, to increase the amount by \$44,767 for a total new amount not to exceed \$11,912,392 for the purpose of providing additional funding for the Refugia Conservation Measure and approves the amended Application.
- 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. 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 13th DAY OF APRIL, 2021.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Benjamin F. Youngblood, III
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel