



Legislation Text

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Consider recommendation from EAA staff to approve Voluntary Irrigation Suspension Program Option (VISPO) forbearance agreements with Kincaid Sabinal, LLC, Tierra D'Hani's LLC, Scott G. Yanta, Kimberly Yanta, Tierra Lytle LLC, Martha Watkins Hardesty, Lena Jo Davenport, as Trustee of the Lena Jo Davenport Revocable Trust, and Dan McWhorter and wife, Mary McWhorter, and Kenneth D. Sparks for Edwards groundwater withdrawal rights in the total amount of not less than \$591,196.05, and not to exceed \$2,342,888.05 for the Voluntary Irrigation Suspension Program Option in support of the Edwards Aquifer Habitat Conservation Plan.

RECOMMENDED MOTION:

Move the board approve VISPO forbearance agreements for permitted Edwards groundwater rights between the EAA and the permit holders listed herein, in the total amount of not less than \$591,196.05, and not to exceed \$2,342,888.05 for the Voluntary Irrigation Suspension Program Option in support of the Edwards Aquifer Habitat Conservation Plan, and authorizing the General Manager to execute the Agreement.

SUMMARY:

The purpose of this agenda item is for the board to consider an EAA staff recommendation to approve VISPO forbearance agreements (Agreements) for permitted Edwards groundwater rights for the Voluntary Irrigation Suspension Program Option in support of the Edwards Aquifer Habitat Conservation Plan (EAHCP). The EAHCP includes several measures intended to minimize and mitigate the impact of the use of Edwards groundwater on federally-listed threatened and endangered species associated with the Edwards Aquifer. A significant component of the EAHCP as a conservation and springflow protection measure is the use of VISPO as a long-term conservation measure to reduce pumping from the Edwards Aquifer during severe droughts and to help maintain a minimum springflow at Comal and San Marcos springs. The VISPO is a voluntary program through which the EAA is attempting to enroll and maintain 40,000 acre-feet of permitted irrigation rights annually into "forbearance agreements" so that the rights will go un-pumped in years of severe drought, thereby reducing demand on the aquifer at the most critical time. Such demand reduction will improve aquifer levels and protect springflows at Comal and San Marcos springs.

VISPO enrollees will begin to receive payments in 2019 or 2020, in two ways according to the following payment schedule. Standby Payment: Every participant in VISPO will receive a "Standby Payment" of \$54 per acre-foot of permitted irrigation rights enrolled no later than March 1st of each year. This payment will be made regardless of whether or not the participant is required to suspend pumping the enrolled rights during that year. Forbearance Payment: If the water level at the J-17 index well in San Antonio is at or below 635 feet above mean sea level (msl) on October 1 of any year, the EAA will notify program participants to suspend the pumping of the enrolled water for the

following year beginning on January 1. In years in which pumping of enrolled water is suspended, participants will be paid an additional "Forbearance Payment" of \$160 per acre-foot of permitted irrigation rights enrolled no later than March 1st of that year. The enrolled irrigation groundwater rights may not be pumped for the remainder of that year, regardless of aquifer levels.

EAA received VISPO Enrollment Applications from the following permit holders for 5-year contract terms.

Permit No.: P101-790
Permit Holder: Kincaid Sabinal, LLC
Effective: 2020
Enrolled Amt.: 700.00 acre-feet
Option Costs (min/max): \$189,000.00 / \$749,000.00

Permit No.: P101-207
Permit Holder: Tierra D'Hanis LLC
Effective: 2020
Enrolled Amt.: 366.655 acre-feet
Option Costs (min/max): \$98,996.85 / \$392,320.85

Permit No.: P101-916
Permit Holder: Scott G. Yanta and Kimberly Yanta
Effective: 2019
Enrolled Amt.: 362.792 acre-feet
Option Costs (min/max): \$97,953.84 / \$388,187.44

Permit No.: P101-157
Permit Holder: Scott G. Yanta and Kimberly Yanta
Effective: 2019
Enrolled Amt.: 237.208 acre-feet
Option Costs (min/max): \$64,046.16 / \$253,812.56

Permit No.: P101-118
Permit Holder: Tierra Lytle LLC
Effective: 2020
Enrolled Amt.: 167.970 acre-feet
Option Costs (min/max): \$45,351.90 / \$179,727.90

Permit No.: P101-890
Permit Holder: Martha Watkins Hardesty
Effective: 2020
Enrolled Amt.: 128.848 acre-feet
Option Costs (min/max): \$34,788.96 / \$137,867.36

Permit No.: P101-869
Permit Holder: Lena Jo Davenport, as Trustee of the Lena Jo Davenport Revocable Trust
Effective: 2020

Enrolled Amt.: 100.00 acre-feet
Option Costs (min/max): \$27,000.00 / \$107,000.00

Permit No.: P108-500
Permit Holder: Dan McWhorter and wife, Mary McWhorter
Effective: 2020
Enrolled Amt.: 64.142 acre-feet
Option Costs (min/max): \$17,318.34 / \$68,631.94

Permit No.: P101-670
Permit Holder: Kenneth D. Sparks
Effective: 2019
Enrolled Amt.: 62.00 acre-feet
Option Costs (min/max): \$16,740.00 / \$66,340.00

EAA staff has reviewed and confirmed the accuracy of the permit information contained in the applications above. If approved, the total amount of groundwater rights secured by the EAA in VISPO Agreements effective in 2019 will be 37,235.452 acre-feet. Attached to this summary is the template of the five-year agreement, which was prepared by legal counsel and approved, as to form, by the board.

M/WBE PARTICIPATION:

This agenda item does not involve the procurement of goods or services by the EAA and, therefore, this section is not applicable.

STRATEGIC PLAN REFERENCE:

This agenda item supports the EAA's policy direction as set forth in the EAA 2016-20 Strategic Plan: Goal A. Sustain Federally Protected Aquifer-Dependent Species.

Acquisition of 40,000 acre-feet of water for the VISPO is required of the Edwards Aquifer Authority to maintain compliance with the Incidental Take Permit issued by USFWS on March 18, 2013. Specifically, this item is related to the obligations of Section 5.1.2 of the Edwards Aquifer Habitat Conservation Plan.

FISCAL IMPACT:

Annual Payments for the forbearance agreements effective 2019 considered here will be disbursed by March 1, 2019 in the total amount of \$35,748.00 (stand-by payment only). Annual Payments for the forbearance agreements effective in 2020 considered here will be disbursed by March 1, 2020, and will range from \$82,491.21 (stand-by payment only) to \$326,909.61 (forbearance + stand-by). The 2019 proposed budget will reflect the stand-by amount for VISPO payments due to the water level at the J-17 index well recorded above 635 feet msl on October 1, 2018 "trigger" date which

does not require a forbearance payment.

The amount of \$4,172,000 is included annually in Table 7.1 of the EAHCP and is derived with the following assumptions:

The full enrollment of 40,000 acre-feet is achieved;

The ratio of 5-year to 10-year enrollment is 70% 5-year and 30% 10-year, consistent with the results obtained from an interest survey completed in 2010 by irrigators;

An annual cost for the 5-year and 10-year Standby and Implementation payments is determined by averaging the total 10-year costs; and

Modeled results indicated an implementation rate of 16 times in the 54-year model history (30%) and a spreadsheet was created that contained the projected implementation history for all 54 years; where the annual cost was determined by averaging the costs for the 54-year period.

The total estimated cost for VISPO in Table 7.1 of the EAHCP over the fifteen-year term is \$62,580,000.