

# DISCUSSION DRAFT ONLY

## EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM(EAHCP PROGRAM)

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### PROGRAM OPERATIONAL RULES

FOR

### EAHCP PROGRAM ADAPTIVE MANAGEMENT STAKEHOLDER COMMITTEE MEMBERS AND PARTICIPANTS

#### SECTION 1. PROMULGATION AND PURPOSE.

**1.1. Promulgation.** These Rules are promulgated by the EAHCP Program Adaptive Management Stakeholder Committee created in compliance with the requirements of the Funding and Management Agreement (“FMA”) and in furtherance of the spirit of Senate Bill 3 (“S.B. 3”).

**1.2. Purpose.** The purpose of these Rules is to provide rules and procedures (a) to ensure that the Stakeholder Committee is an open process that provides advance public notice of meetings and proposed actions, opportunity for stakeholder participation, open communication, and consensus-based decision-making; and (b) to enable the EAHCP Program to meet the purposes, goals, requirements, and, to the maximum extent feasible, deadlines imposed by the FMA.

#### SECTION 2. APPLICATION AND CONSTRUCTION.

**2.1. Application.** These Rules, and any amendment of these Rules made under Section 10, shall be effective and apply to the actions of the Stakeholder Committee from and after the respective date of approval of the Rules or the amendment.

**2.2. Construction.** These Rules shall be construed to comply with applicable law and the FMA. In the event of any inconsistency in any portion of these Rules and applicable law, the inconsistent portion shall be disregarded or, to the extent feasible, reformed to be consistent with applicable law.

**2.3. Good Faith Exceptions.** These rules recognize the critical importance to the EAHCP Program of requirements for procedural transparency, including, but not limited to, requirements for prior public notice and opportunity for participation in proposed EAHCP Program activities. However, Participants also acknowledge that for the EAHCP Program to efficiently and timely meet its goals, it is not feasible for every discussion pertaining to the EAHCP Program to be conducted in strict compliance with the procedural requirements in these Rules for prior notice

and public participation. Accordingly, these rules are not intended to prohibit discussions of EAHCP Program-related topics among Stakeholder Committee members or among the Program Manager, Chair, other Stakeholder Committee members, and other persons, provided such discussions are conducted in good faith and in furtherance of the goals of the EAHCP Program. Persons participating in such discussions shall use their own best judgment in determining when reasonable notice to the Participants, either in advance or after-the-fact, of such discussions is appropriate in order to further the interests of the EAHCP Program.

**2.4. Percentages.** Whenever these Rules provide for a specified percentage of persons to constitute a quorum, to consider or approve some action, or to perform any other duty or responsibility, and the result is not a whole number, the result shall be rounded up to the next whole number.

### **SECTION 3. DEFINITIONS.**

Certain terms used in these Rules shall have the meanings assigned in this section unless the context clearly indicates another meaning. Any terms used as captions of sections or subsections are for convenience only and have no special meaning unless assigned a meaning in this section.

**“Abstention”** means that a Member or Alternate Member affirmatively indicates, in good faith, his or her intention not to vote on a matter.

**“Alternate Member”** means a person appointed as provided in Subsection 5.2 to serve as an alternate to a Member of the Stakeholder Committee. Lower case “alternate member” means a person who serves as an alternate to a member of an Issue Team, Subcommittee, or Work Group.

**“Chair”** means the member of the Stakeholder Committee, Subcommittee, Work Group, or Issue Team who is elected or appointed to chair the meetings of the group. Unless another group is indicated, “Chair” refers to the Stakeholder Committee Chair, who has the duties provided in Subsection 6.2.

**“Consensus”** means approval of a decision by all voting Members of the Stakeholder Committee, Subcommittee, Issue Team, or Work Group as determined by an explicit request for approval to the group at a time when the requisite quorum is present and in response to which no voting Member indicates opposition to the decision.

**“Consensus-based decisions”** mean decisions reached by consensus or by the process provided in Subsections 7.8 and 7.9 of these Rules.

**“EAA”** means the Edwards Aquifer Authority.

**“EAHCP” or “HCP”** means the habitat conservation plan prepared pursuant to S.B. 3 and Section 10(a)(2)(A) of the federal Endangered Species Act and submitted to the U.S. Fish and Wildlife Service on or about December 11, 2011 (as revised June 2012).

**“EAHCP Program”** means the activities undertaken to implement the EAHCP, the FMA, and the Permit.

**“Entire Stakeholder Committee”** or **“entire membership of the Stakeholder Committee”** or **“by vote of the entire membership,”** or a similar phrase using “entire” in

a reference to a requirement for quorum or consensus or voting means the requirement is based on the total number of persons serving as Members of the Stakeholder Committee, including any Alternate Member temporarily replacing a Member, but not including a Member whose position has been vacated as described in Subsection 5.5.

**“Facilitator”** means a person responsible for facilitating discussion and consensus-building among Stakeholder Committee Members at EAHCP meetings or among Subcommittee members at Subcommittee meetings. A Facilitator may be the Program Manager, a staff person appointed by the Program Manager, or an independent facilitator. A person may not be appointed as the Facilitator without the concurrence of the Stakeholder Committee.

**“FMA”** means the Funding and Management Agreement submitted to the U.S. Fish and Wildlife Service with the EAHCP and effective on January 1, 2012.

**“Implementing Committee”** means the committee created pursuant to Section 7.7 of the FMA.

**“Issue Team”** means a group of persons, which may include Members and others, appointed by the Stakeholder Committee to assist the Stakeholder Committee reach consensus on certain Tier 1 Decisions, as provided in Subsection 7.8.

**“Member”** means a person who serves as a member of the EAHCP Stakeholder Committee established under the FMA and any Alternate Member with respect to any meeting or procedure for which the Alternate actually acts as the alternate to an unavailable Member. When used in these Rules in a reference to a quorum or a vote of the Stakeholder Committee or a vote of the entire membership of the Stakeholder Committee, the term “Member” does not include any Member whose position has been vacated as described in Subsection 5.5. Lower case “member” means a person who serves as a member of an Issue Team, Subcommittee, or Work Group.

**“Non-Tier 1 Decision”** means a decision of or action taken by the Stakeholder Committee which is not enumerated in these Rules as a Tier 1 Decision.

**“Nonvoting member”** means a person authorized or appointed to serve as a member of a Subcommittee or Work Group, but without the right to vote.

**“Participant”** means a person, other than a Stakeholder Committee Member, who signs up for the EAHCP list-serv and makes a written commitment to abide by the Rules.

**“Permit”** means the incidental take permit to be issued by USFWS to the Edwards Aquifer Authority, the City of New Braunfels, the City of San Marcos, the City of San Antonio (acting by and through its San Antonio Water System Board of Trustees), and Texas State University.

**“Program Manager”** means the person selected by the EAA, as provided in the FMA, to manage the EAHCP.

**“Quorum”** means the minimum number of voting Members of the Stakeholder Committee or members of any Subcommittee, Issue Team, Work Group or other group described in these Rules required to either consider or take action on a matter within that group’s authority.

**“Rules”** means these Program Operational Rules for the EAHCP Program Adaptive Management Stakeholder Committee Members and Participants, as they may be amended from time to time.

**“S.B. 3”** means Article 12 of Senate Bill 3, 80<sup>th</sup> Regular Session, 2007, of the Texas Legislature and Article 2 of House Bill 3, 80<sup>th</sup> Regular Session, 2007, of the Texas Legislature. The Articles amend the Edward Aquifer Authority Act (“Act”), Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993. Section 1.26A of the Act provides for the development of a recovery implementation program. Senate Bill 3 and House Bill 3 contain identical relevant provisions.

**“Science Committee”** means the committee created pursuant to Section 7.9 of the FMA.

**“Secretary”** means the member of the Stakeholder Committee, Subcommittee, Work Group, or Issue Team who is elected to serve as secretary of the group. Unless another group is indicated, “Secretary” refers to the Stakeholder Committee Secretary, who has the duties provided in Section 6.4.

**“Section”** means a section of these Rules, unless the term is part of a reference to a section of the FMA.

**“Sponsor”** means a state agency, political subdivision of the state, governmental entity, public utility, a Stakeholder association or group, or other entity authorized in the FMA to be represented through the designation of a representative to serve as a Member of the Stakeholder Committee. The term Sponsor includes an entity authorized to designate a representative of a specified Stakeholder group as a Member of the Stakeholder Committee.

**“Stakeholder”** means an individual or group that has as an interest in the protection of the Endangered Species or the management of the Edwards Aquifer, or both.

**“Stakeholder Committee”** means the committee established pursuant to Section 7.8.1 of the FMA to provide input into operations and decisions under the HCP.

**“Subcommittee”** means any Subcommittee established by the Stakeholder Committee, unless the context indicates the term is used to mean all Subcommittees.

**“Subsection”** means a subsection of these Rules, unless the term is used as part of a reference to a subsection of the FMA.

**“Tier 1 Decision”** means one of the Stakeholder Committee decisions enumerated immediately below:

- (a) Recommendations to the Implementing Committee, the Program Manager, or one or more members of the Implementing Committee on a proposed Nonroutine AMP Decision or a proposed Strategic AMP Decision, as those terms are used in the FMA;
- (b)
- (c) Membership, responsibilities, and procedures of subcommittees;
- (d) Adoption or amendment of the decision process of the Stakeholder Committee;
- (e) Adoption or amendment of Program Operational Rules;
- (f) Appointments to the Science Committee;
- (g) Recommendations to the Program Manager or the Implementing Committee on the design of studies related to the Biological Goals or the Biological Objectives;
- (h) Recommendation of an organization to establish the Science Review Panel in the event that the National Academies of the National Academy of Science is not retained for that function pursuant to Section 7.10 of the FMA ; and
- (i) Any significant action determined by the Stakeholder Committee to require Tier 1 decision-making.

**“USFWS”** means the United States Fish and Wildlife Service.

**“Vice Chair”** means the member of the Stakeholder Committee, Subcommittee, Work Group, or Issue Team who is elected to serve as Vice Chair of the group. Unless another group is indicated, “Vice Chair” refers to the Stakeholder Committee Vice Chair, who has the duties provided in Subsection 6.3.

**“Work Group”** means a specific ad hoc work group of Members and Participants established under Subsection 8.11.

## **SECTION 4. PARTICIPATION IN THE RIP.**

### **4.1. Participants.**

**4.1.1.** Any individual Stakeholder who registers as a Participant with the Program Manager by providing the Stakeholder's name and contact information and agreeing, in writing, to abide by the Rules is considered to be a Participant in the EAHCP Program.

**4.1.2.** Any governmental entity or non-governmental organization, acting by and through one or more of its representatives, which registers as a Participant with the Program Manager is a Participant in the EAHCP Program.

**4.1.3.** Each Participant is subject to the procedural requirements of these Rules.

## **SECTION 5. ORGANIZATION OF THE STAKEHOLDER COMMITTEE.**

The Stakeholder Committee is organized as provided in this Section 5.

**5.1. Composition of the Stakeholder Committee.** The Members of the EAHCP Program Stakeholder Committee shall be those persons designated to represent the Sponsors listed in Section 7.8.1 of the FMA. Nothing in this provision shall be construed to prevent an organization from withdrawing from representation on the Stakeholder Committee.

**5.2. Alternate Members.** The Program Manager will request each Sponsor or Member to designate in writing an Alternate Member to act for a Member in the event of the Member's temporary unavailability. An Alternate Member may act at any time, in a meeting or otherwise, on behalf of only one Sponsor or only one Member, and may not act on any matter at the same time as the Member the Alternate Member is designated to temporarily replace; provided that an Alternate Member may participate in HCP Program discussions in which such Member also participates.

**5.3. Replacement of a Member.** If a Member resigns or becomes permanently unavailable for any reason, the Program Manager will request the Sponsor to designate in writing a person to replace the Member.

**5.4. Participation of Members and Alternates.** The unavailability of both a Member and the Member's Alternate at three consecutive meetings shall be deemed a resignation of the Member, and the Program Manager will request the Sponsor to designate in writing a person to replace the Member. If the Alternate Member is named to replace the Member, the Program Manager will request the Sponsor to designate in writing a new Alternate Member.

**5.5. Vacated Position on Stakeholder Committee.** A position as Member of the Stakeholder Committee shall be vacated or deemed vacated if any of the following occurs:

**5.5.1.** a Member or Sponsor notifies the Program Manager in writing that the Member has withdrawn and that the Sponsor, if the Member has a Sponsor, no longer intends to participate on the Stakeholder Committee;

**5.5.2.** a Sponsor has not designated a person to replace a Member who resigns or becomes unavailable within 90 days of the resignation or unavailability; or

**5.5.3.** a Sponsor notifies the Program Manager in writing that the Sponsor is unable to designate a Member. The Stakeholder Committee may take action to reinstate a vacated position in the same manner as it may take action to add a Member.

**5.6. Nonvoting members.** The Stakeholder Committee may appoint nonvoting members to serve on any Subcommittee or Work Group. A nonvoting member may not vote on any matter and will not be included in the determination of the required quorum for, or in the calculation of the required votes for approval of an action at, a meeting of the Subcommittee or Work Group on which the nonvoting member may serve. A nonvoting member is a Participant subject, to the extent applicable, to the procedural requirements of these Rules, including the right for the designation of an alternate member and a replacement.

## **SECTION 6. STAKEHOLDER COMMITTEE GOVERNANCE.**

**6.1. Election of Officers.** The Stakeholder Committee will elect from among its Members a Chair, Vice Chair, a Secretary, and other officers as may be needed. Election of any officer is a Non-Tier 1 Decision and requires a vote of 75 percent of the entire Stakeholder Committee. An officer may participate in discussions of Tier 1 Decisions and Non-Tier 1 Decisions and may vote on any such decisions.

**6.2. Duties of the Chair.** The Chair will have the following duties:

**6.2.1.** coordinate with the Program Manager and Members of the Stakeholder Committee the scheduling of Stakeholder Committee meetings;

**6.2.2.** coordinate with the Program Manager and Members of the Stakeholder Committee the development of an agenda for each Stakeholder Committee meeting;

**6.2.3** preside over Stakeholder Committee meetings in a manner that encourages consensus-based decision-making, full participation, full and open discussion to allow expression of all points of view, and consideration of alternative proposals for resolving controversial issues;

**6.2.4.** assign facilitation of discussions of Tier-1 Decisions to the Program Manager or other Facilitator;

**6.2.5.** facilitate discussion of Non-Tier 1 agenda items either personally or by requesting the Program Manager or a Facilitator to facilitate such discussion;

**6.2.6.** provide leadership of the Stakeholder Committee;

**6.2.7.** perform in a representative capacity for the Stakeholder Committee as requested by the Stakeholder Committee; and

**6.2.8.** meet, in coordination with and after notice to the Program Manager, with elected and appointed officials and other persons on matters related to the EAHCP, and if the Chair and Program Manager determine it is in the interest of the EAHCP to do so, include other Participants in such meetings;

**6.2.9.** communicate to Participants information relevant to Stakeholder Committee decisions; and

**6.2.10.** other duties as requested by the Stakeholder Committee.

**6.3. Duties of the Vice Chair.** The Vice Chair will exercise the duties of the Chair in the event of the unavailability of the Chair.

**6.4. Duties of the Secretary.** The Secretary will oversee the preparation of minutes of Stakeholder Committee meetings and coordinate with the Program Manager the management of records of the Stakeholder Committee. The Secretary will exercise the duties of the Chair in the event of the unavailability of both the Chair and the Vice Chair. Minutes of Stakeholder Committee meetings will be posted on the EAHCP Program website.

**6.5. Duties of other Officers.** The election of and duties of other Stakeholder Committee Officers will be determined by the Stakeholder Committee from time to time. In the event that the Chair, Vice Chair, and Secretary are all unavailable to preside at a meeting, the Stakeholder Committee may, by consensus, name one of its Members as a presiding officer to fulfill the duties of the Chair during that meeting.

**6.6. Terms of Office for Officers.** Each officer shall serve a term not longer than one calendar year, commencing on the date of election and ending on the last day of the calendar year in which the term commences. Unless he or she has resigned, is unable to continue to serve, or has been removed from office, an officer shall continue to serve until a replacement is named. A Member may be elected to an office for any number of additional one-year terms.

**6.7. Removal of Officer.** An officer subject to a vote of confidence requested as provided in Subsection 7.3.4 must receive an affirmative vote of confidence from at least 75 percent of the entire Stakeholder Committee to continue in office or is otherwise immediately removed.

**6.8. Election of Replacement Officer.** The Stakeholder Committee will elect by 75 percent vote of the entire Stakeholder Committee a Member as replacement officer to complete any unexpired portion of a term of any officer who resigns, is unable to complete a term, or is removed from office.

## **SECTION 7. CONDUCT OF MEETINGS.**

**7.1 Open Meetings.** All meetings of the Stakeholder Committee and any Subcommittee, Issue Team, or Work Group will be held in the Edwards Aquifer region at meeting locations to be determined. The meetings will be open to the public and held in facilities that can accommodate members of the public who may wish to attend. All or part of a Stakeholder Committee meeting may be closed, so that only Members and, if appropriate, key EAHCP Program staff may attend and participate in a discussion, if such closing is required by law or if, upon the request of two or more Members or the Program Manager, at least 75 percent of the entire voting membership of the Stakeholder Committee determines there is good cause to close that portion of the meeting.

**7.2. Notices.** Notices of meetings of the RIP, the Steering Committee, and any Subcommittee and Work Group, and the agendas for such meetings, will be posted on the RIP website at least six calendar days prior to the meeting. The meeting notice and agenda will also be placed for electronic distribution on the listserv at [EARIP@LISTSERV.TAMU.EDU](mailto:EARIP@LISTSERV.TAMU.EDU), or on a replacement



listserv, at least six calendar days prior to the meeting. Notices of any Issue Team meeting set pursuant to Subsection 7.8 will be posted on the RIP website at least 72 hours prior to any meeting and will be distributed timely by electronic notice to each Member and Participant who has provided an electronic address to the Program Manager. Meeting notices will also be posted as may be determined to be required by applicable law and on or at other locations reasonably available to the public.

**7.3. Agenda.** The Chair and the Program Manager, after consideration of discussion among and input from Stakeholders, will develop an agenda for each scheduled RIP meeting and Steering Committee meeting as provided in this Subsection.

**7.3.1.** The agenda will identify each matter or item, including each Tier 1 Decision and Non-Tier 1 Decision, which the Steering Committee may discuss or consider for action, and will identify any matter or item that it is anticipated the Steering Committee will consider in a closed meeting pursuant to Subsection 7.1.

**7.3.2.** The Chair and Program Manager may, at their joint discretion, place an item on the agenda for discussion at the next meeting pursuant to a written request from any Member, Nonvoting Member, or MOA Participant received by the Program Manager by mail or email at least eight days prior to the meeting.

**7.3.3.** The Chair and Program Manager shall place any item on the agenda for discussion at the next RIP meeting if a written request is made by at least three Members, Nonvoting Members, or MOA Participants, or any combination of such persons, received by the Program Manager by mail or email at least eight days prior to the meeting, and shall place an item of the agenda for consideration for action if so requested by a majority of the entire Steering Committee at a prior meeting.

**7.3.4.** If written request for a vote of confidence with respect to one or more officers is made by at least 20 percent of the Members and received by the Program Manager by mail or email at least eight days prior to a RIP meeting, the Chair and Program Manager shall place on the agenda for action at that meeting

(a) a vote of confidence, to be held as provided in Subsection 6.7, and

(b) the possible election of a replacement officer, to be held as provided in Subsection 6.8 in the event such replacement is needed.

**7.4. Quorum.** A Steering Committee decision shall be made only at a meeting noticed pursuant to Subsection 7.2 above. Fifty-one percent of the entire Steering Committee membership will constitute a quorum for a meeting at which any decision, including any Tier 1 Decision, on the agenda may be discussed and at which action on any Non-Tier 1 Decision on the agenda may be taken. Eight-five percent of the entire Steering Committee membership will constitute a quorum for a meeting at which action on any Tier 1 Decision on the agenda may be taken. As provided in Article 4 of the MOA, and consistent with the purposes and goals of the RIP, Members will make best efforts to attend all RIP meetings, either in person or by a designated Alternate Member, and will act in good faith in participating in the activities of the RIP.

**7.5. Meeting Rules of Order.** To the extent not inconsistent with these Rules, the RIP will follow Roberts Rules of Order, in a current edition approved by the Steering Committee from

time to time, for the conduct of its meetings. The rules of order may be temporarily suspended at any time by vote of a majority of the Steering Committee upon determining that suspension will facilitate discussion, deliberation, and consensus by Participants. Failure to follow the rules of order shall not constitute grounds for an appeal of an action or decision. The Chair may request the Program Manager to provide guidance on the interpretation of any rule of order, any of these Rules, any provision of the MOA, or applicable law with respect to the conduct of any meeting.

**7.6. Consideration of Items.** The Chair will request approval, by majority vote of the entire Steering Committee membership, of the order of the agenda as the first item of business at each RIP or Steering Committee meeting, and will introduce items for consideration at each such meeting in the order of the agenda unless the Steering Committee, by majority vote of the entire membership, approves a different order or approves postponing consideration of an item to a subsequent meeting. If, at a meeting, a Member or Participant inquires about an item not on the agenda, any discussion about such an item must be limited to a proposal to place the subject on a future agenda, a statement of factual information, or a recitation of existing policy.

**7.7. Consensus-based Decisions.** In compliance with S.B. 3 and the MOA, the goal of the RIP is that all decisions will be made by consensus. Consensus-based decision making on all Steering Committee decisions will be as provided in Article 5 of the MOA and in this Subsection 7.7 and Subsections 7.8 and 7.9.

**7.7.1. Appointment of Facilitator.** A Facilitator may be appointed to facilitate the discussion of and attempt to reach consensus on any proposed Steering Committee decision, and shall be appointed to facilitate the discussion of and attempt to reach consensus on any proposed Tier 1 Decision. The person appointed as Facilitator for each proposed Tier 1 Decision shall be approved by majority vote of the entire Steering Committee, upon recommendation of the Program Manager or any Member or Nonvoting Member. If a Facilitator is not appointed as provided in this Subsection for a proposed Non-Tier 1 decision, the discussion of and attempt to reach consensus on the Non-Tier 1 decision may be led by the Chair.

**7.7.2. Discussion Generally.** In any discussion of Tier 1 and Non-Tier 1 Decisions, the Chair or Facilitator will encourage Participants and Members to reach consensus on the proposed decision. All points of view will be given full and fair review and consideration. The Chair will invite Participants and Members to comment and voice opinions and, if appropriate, to direct questions and requests for clarification to other Participants and Members in the attempt to reach consensus on the proposed decision. The Chair or Facilitator will encourage commenters to speak to the topic at hand and avoid irrelevant comments, may limit individual comments to a reasonable length of time, and will exercise reasonable judgment in calling an end to discussion and requesting consensus approval of the proposed decision after the topic has received full review.

**7.7.3. Discussion and Consensus on Tier 1 Decisions.** The Facilitator of any Tier 1 Decision will facilitate the discussion as provided in Subsection 7.7.2 and this Subsection. Unless consensus is reached in less than an hour, the time for discussion of each proposed Tier 1 Decision will ordinarily be between one and two hours. The Facilitator will extend the discussion period, if needed, to allow full comment on the range of Stakeholder views and for the Steering Committee to attempt to reach consensus on the proposed decision. The Facilitator may call a temporary recess to allow Participants and Members to caucus in Stakeholder groups or may continue the

discussion to the next RIP meeting. At the conclusion of discussion of a proposed Tier 1 Decision, the Facilitator will determine if the Steering Committee has reached consensus by requesting a show of hands. If the Steering Committee indicates it has reached consensus on the proposed Tier 1 Decision, that consensus will be recorded as the action of the Steering Committee on the decision. If the Steering Committee indicates it has not reached consensus on the proposed Tier 1 Decision, the Facilitator will proceed as provided in Subsection 7.8.

**7.8. Tier 1 Decision-Making in Absence of Initial Consensus.** If the Steering Committee has not reached consensus on any Tier 1 Decision, an Issue Team will be appointed to further deliberate and develop the Tier 1 Decision. Each Issue Team will be comprised of between three and nine persons, which may include MOA Participants in addition to Members and Nonvoting Members. The members of each Issue Team will be nominated by the Facilitator, and approved by 75 percent vote of the entire Steering Committee, and representative of the full range of views on the proposed Tier 1 Decision. The Issue Team will be assigned a title to indicate the assigned Tier 1 Decision, and will proceed as provided in this Subsection. The Facilitator may also nominate, and the Steering Committee may approve, by 75 percent vote of the entire membership, one or more alternates to take the place of any Issue Team member who is unable to serve.

**7.8.1. Initial Issue Team Action.** The Issue Team may convene initially during a recess of the RIP meeting at which Team members are appointed. Unless the Steering Committee has appointed a Team Chair, the Issue Team will elect a Team Chair from among its voting Members and attempt to reach a consensus or to restate the proposed Tier 1 Decision for reconsideration by the Steering Committee at that meeting. The Team Chair will orally report to the Steering Committee Chair if the Team reaches a consensus on the proposed decision and proposes reconsideration or a restated decision for consideration by the Steering Committee. If unable to meet or to reach such consensus during a recess of the RIP meeting, the Issue Team shall convene one or more separate meetings as provided in this Subsection.

**7.8.2. Separate Meetings.** The Issue Team shall convene separate meetings, as often as necessary, to fully discuss the Tier 1 Decision and to attempt in good faith to reach consensus on the decision originally proposed or on a restated version. Each Issue Team meeting will be noticed as provided in Section 7.2. The quorum for each meeting is 75 percent of the Team members.

**7.8.3. Issue Team Report.** Following the final separate meeting, the Team Chair will submit to the Facilitator a written report stating one of the following:

- (a) the Team consensus on the proposed decision;
- (b) the Team consensus on a restatement of the proposed decision; or
- (c) a summary of the full range of views discussed and the reasons the Team could not reach consensus on the proposed decision or on a restatement of the proposed decision.

Any members of the Issue Team who disagree with the report may so declare at the final meeting of the Team and may attach one or more minority reports to the Team Chair's report. The Team Chair's report, including any minority report, will be submitted as

soon as practicable, and in any event not more than 20 days after the Issue Team is first appointed, unless by 75 percent vote of the entire membership of the Steering Committee a different deadline has been established. The report, and consideration of any action on the report, will be placed on the agenda of the next RIP meeting.

**7.8.4. Steering Committee Consideration of Consensus by Issue Team.** If the Team Chair reports that the Issue Team has reached a consensus on the decision as originally proposed or on a restated version of the decision, the Steering Committee will, after discussing the Issue Team report, determine if the Steering Committee can reach consensus on the initial or restated decision. If consensus is not reached in a reasonable period of time, the approval process in Subsection 7.8.6 shall be followed.

**7.8.5. Steering Committee Consideration of No Consensus by Issue Team.** If the Issue Team reports that it is unable to reach a consensus on a proposed decision or restated decision to propose to the Steering Committee for consideration, the Steering Committee, by majority vote of the entire membership, may

- (a) allow further discussion in an attempt to reach consensus;
- (b) call for the vote provided in Subsection 7.8.6;
- (c) resubmit the proposed decision or a variation of that decision to the Issue Team for further consideration; or
- (d) submit the proposed decision or a variation of that decision to a new Issue Team.

**7.8.6. Tier 1 Decision Vote.** A Tier 1 Decision that has been submitted to the Issue Team process shall be considered approved if it receives the affirmative vote of 75 percent of the Members of the entire Steering Committee.

**7.8.7. Reconsideration of Tier 1 Decision.** If a Tier 1 Decision that has been submitted to the Issue Team process is voted upon pursuant to Subsection 7.8.6 and is not approved, the Steering Committee, by majority vote of the entire membership, may recommit a revised version to the Issue Team procedures provided in Subsections 7.8.1 through this Subsection 7.8.7 either at the same meeting or a subsequent meeting, or may postpone further consideration of the decision indefinitely.

**7.9. Non-Tier 1 Decision.** A Non-Tier 1 Decision will be considered and discussed consistent with the provisions of Subsections 7.7.1 and 7.7.2. At the conclusion of discussion of a Non-Tier 1 Decision, the Chair will determine if the Steering Committee has reached consensus by requesting a show of hands. If consensus has not been reached, a Non-Tier 1 Decision will be decided by majority vote of the entire Steering Committee.

**7.10. Manner of Voting.** For any decision or action that requires a vote, the Steering Committee will vote by show of hands of the Members. The number of ayes and nays for each vote at a meeting will be noted in the minutes for the meeting. Upon request by any Member, a roll call of votes shall be taken and the results of the roll call shall be noted in the minutes for the meeting.

**7.11. Effect of Abstention.** The abstention of any Member does not affect the number of Members required for determining if a quorum is present and the person or persons abstaining shall be counted as being present for that purpose. The abstention of any Member does not affect the ability to determine if consensus has been achieved because the Member abstaining is not considered to have stated an objection to the matter being considered. The abstention of any Member does not affect the number of votes needed to determine if an action is approved in the absence of consensus, and the number of affirmative votes needed for approval shall be determined based on the entire membership of the voting body, including any abstaining Member.

**7.12. Determination of Quorum.** In determining the presence of a quorum at a meeting, any Alternate Member temporarily replacing a Member shall be included in all calculations, but any position that has been vacated as described in Subsection 5.5 shall not be included in calculating the number required for achieving a quorum or for approving an action. Similarly, any position that is temporarily unfilled because both the Member and Alternate Member have resigned, but for which the conditions for vacating the position have not been met, shall not be included in calculating the number required for achieving a quorum or for approving an action. Unless the rules provide otherwise, a person must be physically present to be counted in determining the presence of a quorum.

**7.13. Special Procedures for Facilitation.** The Steering Committee may, as a Tier 1 Decision, establish by resolution specific procedures governing the facilitation process which may depart from the requirements of these Rules if such procedures are consistent with the recommendations of an independent Facilitator retained to help facilitate the development of the Program Document.

## **SECTION 8. RIP SUBCOMMITTEES AND WORK GROUPS.**

**8.1 Appointment of Subcommittees and Work Groups.** The Steering Committee will appoint the Statutory Subcommittees provided by S.B. 3 (Expert Science Subcommittee and Recharge Facility Feasibility Subcommittee) and may appoint other Subcommittees and Work Groups as provided in this Section 8. The appointment of members of and determination of a charge to any Subcommittee is a Tier 1 Decision. The appointment of members of and determination of a charge to a Work Group may be proposed by the Chair or Program Manager and made upon the approval of a majority of the Members of the entire Steering Committee. In approving appointments, the Steering Committee shall strive to ensure that the membership of a Subcommittee or a Work Group, to the extent relevant to the charge to the group, represents the diversity of interests of Participants.

**8.2. Expert Science Subcommittee.** The Steering Committee will appoint an Expert Science Subcommittee in compliance with the provisions of S.B. 3 and the MOA. In addition to other appointees, the Steering Committee may also appoint Nonvoting Members of the Steering Committee and other nonvoting members to the Expert Science Subcommittee to participate in the work of the Subcommittee. The Expert Science Subcommittee will operate as provided in the applicable Subsections of this Section 8 of these Rules unless the Steering Committee approves other specific operational procedures for the Subcommittee, which will supersede any inconsistent provision in these Rules.

**8.3. Recharge Facility Feasibility Subcommittee.** The Steering Committee will appoint a Recharge Facility Feasibility Subcommittee in compliance with the provisions of S.B. 3. The

Steering Committee will select the Subcommittee members, establish its duration, and develop its charge as Tier 1 Decisions. In addition to other appointees, the Steering Committee may also appoint Nonvoting Members of the Steering Committee and other nonvoting members to the Recharge Facility Feasibility Subcommittee to participate in the work of the Subcommittee. The Recharge Facility Feasibility Subcommittee will operate as provided in the applicable Subsections of this Section 8 of these Rules unless the Steering Committee approves other specific operational procedures for the Subcommittee, which will supersede any inconsistent provision in these Rules.

**8.4. Quorum for Statutory Subcommittee Meetings.** Attendance at any meeting of a Statutory Subcommittee at which the Subcommittee will make a decision on a recommendation to the Steering Committee in response to a specific charge from the Steering Committee shall be in person and 85 percent of the voting members of the Subcommittee shall constitute a quorum for any such meeting. Attendance at any other meeting of a Statutory Subcommittee may be in person or by conference call, and fifty-one percent of the voting members shall constitute a quorum for any such meeting, provided that at least 50 percent of the members making up the quorum participate in person and arrangements are made so that any person who attends the meeting can hear all discussions of the members participating by telephone.

**8.5. Reports of Statutory Subcommittees.** Each Statutory Subcommittee shall operate on a consensus basis to the maximum extent possible. In the event that consensus of the voting members cannot be obtained on all or any part of any report, evaluation, or recommendation to the Steering Committee, the Subcommittee shall prepare its report, evaluation, or recommendation and identify those parts, if less than all, on which consensus has been reached, identify those parts on which consensus has not been reached, explain why consensus was not reached, and indicate the votes of individual voting members of the Subcommittee. In any recommendation to the Steering Committee, a recommendation of a Statutory Subcommittee will have the consensus-based approval of the Subcommittee when at least 75 percent of the entire voting membership of the Subcommittee has voted in favor of the recommendation.

**8.6. Terms of Members of the Statutory Subcommittees.** The terms of members, including nonvoting members, of a Statutory Subcommittee will be for the duration of the respective Subcommittee, as determined by the Steering Committee as a Tier 1 Decision. The Steering Committee may remove and replace members of a Statutory Subcommittee as necessary to ensure an appropriate make up and function of such Subcommittee and may remove and replace Subcommittee officers as it determines to be appropriate. Actions to remove and replace Subcommittee members or officers shall be Tier 1 Decisions.

**8.7 Other RIP Subcommittees.** The Steering Committee may establish additional Subcommittees to advise and assist the Steering Committee in its activities, including but not limited to a Budget Subcommittee, Finance Subcommittee and a Public Outreach Subcommittee. The members of any such Subcommittee may include Steering Committee Members, nonvoting members, other Participants, and members of the public. The members of such Subcommittees may be nominated by the Chair and Program Manager and shall be appointed by the Steering Committee pursuant to the requirements of Subsections 7.7 and 7.8. Any such Subcommittee will operate as provided in these Rules for the Statutory Subcommittees, unless the Steering Committee approves other specific operational procedures for the Subcommittee, which will supersede any inconsistent provision in these Rules.

**8.8. Terms of Members of Other RIP Subcommittees.** The term of each voting and nonvoting member of a Subcommittee, other than a Statutory Subcommittee, shall commence on

the date of appointment or reappointment and end on the earlier of the date that the Subcommittee ceases to exist or the last day of the calendar year next following the year of the appointment or reappointment. However, any member of a Subcommittee whose term has ended prior to the termination of the Subcommittee shall remain as a member until replaced or reappointed. A person may be reappointed to serve any number of terms on a Subcommittee, and may serve on more than one Subcommittee simultaneously. A person may be appointed to serve the unexpired portion of the term of a Subcommittee member who resigns, is removed, or is unavailable to serve.

**8.9. Conduct of RIP Subcommittee Meetings; Officers.** Except as specifically provided otherwise in these rules or in the written charge to a Subcommittee, all activities and meetings of any Subcommittee, including any Statutory Subcommittee, shall be governed by applicable definitions in Section 3; by Subsections 2.3, 5.4, 5.6, 7.1, 7.2, 7.5, 7.11 and 7.12; and by the provisions of this Section 8. To the extent applicable, any reference in the provisions cited in the preceding sentence to the conduct and activities of the Steering Committee shall be construed also as a reference to the conduct and activities of a Subcommittee and any reference to Member, Nonvoting Member, or Alternate Member shall be construed also as a reference to member, nonvoting member, or alternate member, respectively. The Steering Committee will give each Subcommittee a written charge and timetable for reporting to the Steering Committee. If the Steering Committee has not appointed a Subcommittee Chair, the Subcommittee will elect a Subcommittee Chair, by vote of at least 65 percent of the entire voting membership, from among its members. The Subcommittee Chair will coordinate with the Program Manager to call meetings of the Subcommittee, preside over meetings, and prepare and submit reports to the Steering Committee. Any Subcommittee may, at its discretion, elect from among its members a Vice Chair or a Secretary, or both, and assign appropriate responsibilities to such Subcommittee officers. The term of office of each Subcommittee officer, and the replacement of any officer, will be the same as for appointment to the Subcommittee. A Subcommittee may request the Program Manager to designate a Facilitator to assist in its deliberations and attempts to reach consensus.

**8.10. Subcommittee Discussions.** The Subcommittee Chair or Facilitator will encourage Subcommittee members to reach consensus on their recommendations and responses to their charge. The Chair or Facilitator will encourage members and Participants to speak to the topic at hand and avoid irrelevant comments, may limit individual comments to a reasonable length of time, and will exercise reasonable judgment in limiting discussion on a topic to the members of the Subcommittee.

**8.11. Work Groups.** The Steering Committee may from time-to-time, as a Non-Tier 1 Decision, establish an ad hoc Work Group to consider specific administrative matters, other than Tier 1 Decisions, and request any such Work Group to report its findings and recommendations to the Members and Participants within a specified period of time. Unless the Steering Committee establishes different procedures in the appointment of and charge to any Work Group, the activities, including membership, officers, notice, quorum, and reports of a Work Group will be subject to the provisions in these Rules applicable to a Subcommittee.

**8.12. Alternate Members.** Each member of a Subcommittee, other than the Expert Science Subcommittee, shall submit to the Subcommittee Chair and Program Manager a written designation of an alternate member to act for the member in the event of the member's temporary unavailability. An alternate member may act at any time, in a meeting or otherwise, on behalf of only one Sponsor or only one member, and may not act on any matter at the same time as the member the alternate member is designated to temporarily replace; provided that an alternate member may participate in Subcommittee discussions in which such member also participates.

These rules do not authorize the formal designation of an alternate member for the activities of the Expert Science Subcommittee.

## **SECTION 9. PROGRAM MANAGEMENT.**

**9.1 Appointment of Program Manager.** The Steering Committee will appoint a Program Manager to manage the activities of the RIP, the Steering Committee, the Statutory Subcommittees, other RIP Subcommittees, Issue Teams, and Work Groups. The Steering Committee may appoint a special Subcommittee to develop procedures for hiring, conducting performance evaluations, and making appropriate recommendations regarding the Program Manager to the Steering Committee.

**9.2 Duties of the Program Manager.** The Program Manager has the following duties:

**9.2.1.** facilitate certain discussions at meetings of the RIP, as provided in these Rules;

**9.2.2.** develop an annual budget for the RIP;

**9.2.3.** assist in obtaining funding for the RIP;

**9.2.4.** meet, in coordination with and notice to the Chair, with elected and appointed officials and other persons on matters related to the RIP and if it is determined by the Program Manager and Chair to be in the interest of the RIP to do so, include other Participants in such meetings;

**9.2.5.** ensure transparency and opportunity for public participation in RIP activities;

**9.2.6.** communicate to Participants information relevant to RIP decisions;

**9.2.7.** unless the Steering Committee specifically provides otherwise, represent the RIP in communications with the media, prepare and issue press releases for the RIP, testify at any legislative or administrative proceeding on behalf of the RIP, and speak on behalf of the RIP at public forums; and

**9.2.8.** other duties that may be assigned by the Steering Committee.

**9.3. Program Manager's Hiring and Contract Authority.** In addition to exercising general operational and management authority for the RIP, the Program Manager:

**9.3.1.** may select, hire, remove, supervise and direct all employees of the RIP so long as allocation for their respective positions has been made in a budget approved by the Steering Committee;

**9.3.2.** may execute on behalf of the RIP without further authorization by the Steering Committee, provided the Steering Committee has not reserved the right to approve the vendor or contractor, any contract for products or services involving the expenditure of an amount no greater than ten thousand dollars (\$10,000) for which general allocation for such type of contract has been made in the annual budget;

**9.3.3.** may recommend for approval of the Steering Committee the hiring of any contractor or consultant involving an expenditure greater than ten thousand dollars



(\$10,000.00) and shall hire such contractor or consultant if authorized and directed by the Steering Committee; and

**9.3.4.** shall, when authorized and directed by the Steering Committee, execute other contracts, obligations, undertakings, conveyances and other instruments.

**9.4. Location of Office.** The Program Manager and the RIP will be housed by Texas A&M University at a location determined from time to time. The location of the RIP Office shall be listed on the EARIP website: <http://irnr.tamu.edu/earip/>.

Notice of any change in the address of the RIP Office will be distributed to Members and Participants in the same manner as RIP meeting notices.

**9.5. RIP Records.** The Program Manager will maintain RIP records, including lists of MOA Participants, sign-in sheets of Participants, statements of interest, minutes of meetings, Subcommittee reports, and other RIP-related documents, records, and information. The records and information will be available to the public, upon reasonable notice and request, at the office location, specified as provided in Subsection 9.4, provided that any Participant may elect to limit the disclosure of personal contact information and confidential information shall be protected.

## **SECTION 10. AMENDMENT.**

**10.1. Rule Amendment.** These Rules may be amended, supplemented, or superseded by action of the Steering Committee as a Tier 1 Decision. Consideration of the amendment or other change shall be noticed on the posted agenda of a regular RIP meeting, and a written statement of the proposed change and the reason for the change shall be provided to Members and MOA Participants. Approval of the Rule change by the Steering Committee may be on the agenda of a subsequent RIP meeting. The approved rules shall be attached to the minutes of the RIP meeting at which adoption of any rule change occurred and shall be posted on the EARIP website.

**10.2. Effective date of change.** Any change to these Rules will be effective upon the date of its approval by the Steering Committee.