



MEMORANDUM

DATE TBA

Kevin Connally
United States Fish and Wildlife Service
Austin Ecological Services Field Office
10711 Burnet Road, Suite 200
Austin, Texas 78758

RE: Informational Memo related to the Edwards Aquifer Habitat Conservation Plan (EAHCP) for Incidental Take Permit #TE-63663A-0 (ITP)

Mr. Connally,

Implementation of the Edwards Aquifer Habitat Conservation Plan (EAHCP) approved by the U.S. Fish and Wildlife Service (Service) on March 18, 2013 is underway. This memorandum, submitted on behalf of the Edwards Aquifer Authority (EAA), the City of New Braunfels (CoNB), the City of San Marcos (CoSM), the San Antonio Water System (SAWS), and Texas State University (TSU) (collectively the Permittees),¹ is being provided for informational purposes regarding minor variations from the EAHCP and Appendices that have become necessary with active program implementation. Please review these modifications, and provide verification that implementing these changes is in compliance with our Incidental Take Permit.

Refugia Program §5.1.1: The Permittees understand that in order to meet the obligations listed in Section K of the ITP, and Section 5.1.1 of the EAHCP, funding for refugium efforts must be paid to the Service each year, beginning January 1, 2014, for the term of the ITP in an amount not to exceed \$1,678,597.00 annually. In accordance with the specific language of the EAHCP and ITP and with the Service's Contingency Plan, we request the Service confirm this interpretation of their responsibility and obligation to provide refugia for the Covered Species in exchange for this long term financial commitment.

Stage V Emergency Water Supply §5.1.4.2: Section 5.1.4.2 of the EAHCP describes Stage V Critical Period Management as anticipating that all outdoor use of groundwater withdrawn from the aquifer will be prohibited except for limited circumstances. Under Stage V Critical Period Management, the EAA requires a 44% reduction in pumping from all Edwards Aquifer permit holders. The EAA does not regulate how pumping reductions are achieved. To assist permit holders, the EAA will act within its current authority to assist permit holders in acquiring additional water leases, and the EAA has additionally extended the

¹ The Implementing Committee (representing the five Permittees and the Guadalupe-Blanco River Authority as a non-voting member) unanimously approved this memorandum at their meeting on September 19, 2013.

deadline for processing water transfers to provide permit holders ample time to acquire necessary water leases in an effort to limit the occurrence of over-pumping.

Applied Research Facility Experimental Channel at the USFWS National Fish Hatchery and Technology Center §6.3.4: Section 6.3.4 of the EAHCP assumes the use of an experimental channel at the USFWS Fish Hatchery (now the San Marcos Aquatic Research Center (SMARC)) for conducting all EAHCP related applied research. Upon consultation with the EAHCP Science Committee, it was determined EAHCP research requires the use of troughs, labs, raceways, ponds, channels, and mesocosms. This determination was based on the necessity to contain the species, the size and biological nature of the species, the ability to manipulate water quality, conduct numerous replications in various conditions, and the physical space required to implement the research. Therefore, applied research activities as described in the EAHCP will utilize this broader scope of research mediums and be conducted at the Freeman Aquatic Building at Texas State University, the San Marcos and/or Comal River systems, the San Marcos Aquatic Research Center, or a comparable facility deemed appropriate for research by EAHCP staff, the Implementing Committee, and/or the Science Committee.

High-Efficiency Plumbing Fixtures & Toilet Distribution Program § 5.1.3.2.2: The EAHCP assess compliance for this program of the Regional Water Conservation Program (RWCP) through the collection of old toilets. Given that municipalities will be placing 50% of the anticipated conserved water into the groundwater trust when toilets are distributed, obtaining replaced toilets is not necessary as the groundwater trust will reflect compliance. Compliance for exempt wells users will be ensured by requiring an Installation Certificate to be completed once a toilet has been installed. The sponsoring entity will be responsible for submittal of the Installation Certificates to the EAA. Receipt of the Installation Certificate will result in the inclusion of 100% anticipated water conserved towards the 10,000 acre-feet goal identified for the RWCP.

Commercial/Industrial Retrofit Rebate §5.1.3.2.3 and Water Reclamation for Efficient Water Use §5.1.3.2.4: The EAHCP outlines specific rebate and subsidy protocols for the implementation of the RWCP that, upon further examination, are not compatible with the EAA permitting system and may not offer the highest level of conservation given available funding. There may be instances where more or less of a rebate or subsidy is necessary and/or appropriate to successfully achieve the goals of this program. For this reason, the logistics related to program implementation will be determined on a case-by-case basis to best maximize available water savings and fiscal stewardship.

Management of Recreation in Key Areas §5.4.2: Section 5.4.2 of the EAHCP discusses the establishment of permanent access points along the east and west banks of Spring Lake. To minimize the impacts from recreation, TSU will maintain permanent access points already present on the west bank of the San Marcos River between Spring Lake Dam and the Aquarena Drive Bridge; as these access points are already present, no new access points along the west bank will be added. Along the east bank, where a State Scientific Area is currently located, there is a population of Texas wild-rice that would be threatened as a result of increased accessibility if permanent access points were added. For this reason, there will be no access points created along the east bank.

Sediment Removal below Sewell Park: Section 5.3.6 of the EAHCP identifies that silt will be vacuumed using a hose that has screen to prevent suctioning biota greater than 0.25 inch in diameter. Initial efforts to remove sediment using a 1/4" mesh screen proved ineffective as the screen quickly clogged preventing sediment from being suctioned. For this reason, future sediment removal efforts will be accomplished without the use of a 1/4" mesh screen. These revised methodologies will not result in any additional impacts to listed species because, pursuant with the EAHCP, the following activities will prevent additional take:

- i. Staff/Consultants will fin the area to be suctioned to encourage darters and other biota to vacate the area;
- ii. Divers will be trained to successfully identify the life stages of listed species and will stop suctioning should their presence in the immediate area be detected;
- iii. The nozzle of the vacuum will be held strategically in the soil without free movement in the water to prevent incidental suction of species; and
- iv. Staff will be present along the bank to monitor the effluent for presence of listed species and other biota.

Section 5.6.5 of the Funding and Management Agreement (FMA): The FMA as originally written did not allow for the funding of employees of any of the Permittees. Amendment 1 to the FMA², adds a provision to section 5.6.5 that allows employees of Texas State University to receive compensation for work on EAHCP projects as long as they meet pre-determined conditions outlined in the Amendment. It is in the best interest of the EAHCP to utilize all available resources and scientific expertise available at Texas State University throughout this process. This Amendment can be found as Attachment 1 to this letter.

Approval of these minor variations will allow the implementation of the EAHCP to continue in the most effective manner possible. We appreciate your time and consideration of these items.

Thank you,

Nathan Pence
Acting Program Manager
Edwards Aquifer Habitat Conservation Plan
npence@edwardsaquifer.org
210-477-8527

² The Implementing Committee (representing the five Permittees and the Guadalupe-Blanco River Authority as a non-voting member) unanimously approved this Amendment to the FMA at their meeting on May 16, 2013.

EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM**AMENDMENT NO. 1****TO THE FUNDING AND MANAGEMENT AGREEMENT****by and among****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 – San Marcos****to fund and manage the Habitat Conservation Plan
for the Edwards Aquifer Recovery Implementation Program**

This Amendment No. 1 to the Funding and Management Agreement (Amendment Agreement) is entered into to be effective on the date of execution by the last signing Party as indicated below (“Effective Date”), by and among the Edwards Aquifer Authority (“EAA”), the City of New Braunfels (“New Braunfels”), the City of San Marcos (“San Marcos”), the City of San Antonio acting by and through its San Antonio Water System (“San Antonio”), and Texas State University – San Marcos (“University”) (collectively, the “Parties,” and individually, “Party”).

RECITALS

WHEREAS, the Parties entered into that certain Funding and Management Agreement (“FMA”) with an Effective Date of January 1, 2012; and

WHEREAS, the Parties now desire to amend the FMA.

AGREEMENT

NOW, THEREFORE, for the mutual consideration expressed in this Amendment Agreement, the Parties agree as follows:

1. Amendment. As of the Effective Date, the Parties hereby amend the FMA as follows:

SUBSECTION 5.6.5 IS AMENDED TO READ AS FOLLOWS:

5.6.5.1 Limitation on Use of Funds – Employees and Administrative Costs.

With the exception of Program Administration Costs of EAA, funds may not be used for: (a) costs of any Party's employees; or (b) any Party's administrative costs, such as costs of overhead, management, administration, research, planning, engineering, or legal services, or any other ancillary costs that are not directly required for the Program.

5.6.5.2 Special Exception.

Notwithstanding anything in Section 5.6.5.1(a), an employee of Texas State University may submit a proposal for consideration and may be awarded a contract for work associated with the implementation of a Conservation Measure in Chapter 5 or Program activity in Chapter 6 of the HCP assigned to any Party in an approved Work Plan and Funding Application as long as each of the following conditions are met:

(a) The costs for the measures are not used to fund an increase in Texas State's permanent Staff or for work that is historically operational in nature;

(b) The contract for the project has been awarded through a competitive procurement process that considers cost, contractor qualifications, and merits of the contractor's proposal, and through which the selected contractor's proposal was determined to be competitive with respect to each of these criteria; and

(c) After the contractor has been selected, the EAA will issue those contracts for which Texas State or the City of San Marcos is responsible under which a Texas State Employee will be paid, and the HCP Program Manager will

manage those contracts.

5.6.5.3 Conduct of Texas State Contractor/Employees.

Any employee of Texas State who is paid from HCP Funds shall:

(a) Give first priority to the purposes and goals of the HCP as reflected by the entire Implementing Committee over the individual purposes and goals of the employee's employer;

(b) Conduct his or her work and communications in an open and transparent manner and in a manner that avoids a conflict of interest or the appearance of a conflict of interest;

(c) Not use the employee's Party's status as a member of the Implementing Committee or information that is not publicly available to obtain an advantage in the procurement process; and

(d) Not advocate, directly or indirectly, a particular decision or participate in discussions of policy matters unless expressly requested to participate by the Program Manager and the Implementing Committee. Nothing herein precludes the employee, when requested by the Implementing Committee, from discussing scientific data and conclusions with the Science Review Panel and Science Committee.

Failure to strictly comply with the requirements of Section 5.6.5.3 may be the basis for the termination of the Special Exception with respect to future contracts involving that employee or, if the non-compliance warrants, a recommendation to terminate the employee's participation in an existing contract. In any vote of the Implementing Committee with regard to such a recommendation of termination, Texas State shall abstain, and a decision to terminate must be unanimous among the remaining four voting members of the Implementing Committee.

2. No Effect on Remainder of the FMA. Except as provided in this Amendment Agreement, the FMA shall remain in full force and effect in all respects. This Amendment Agreement shall be governed by and construed under the terms of the FMA.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Amendment Agreement to be duly executed as of the Effective Date.

EDWARDS AQUIFER AUTHORITY

By: _____
Roland Ruiz, General Manager

Date: _____

ATTEST:

By: _____
Jennifer Wong-Esparza, Assistant to Board Secretary

Date: _____

APPROVED AS TO FORM:

By: _____
Darcy Alan Frownfelter, General Counsel

Date: _____

CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, Interim City Manager

Date: _____

ATTEST:

By: _____
Patrick Aten, City Secretary

Date: _____

APPROVED AS TO FORM:

By: _____
Valeria Acevedo, City Attorney

Date: _____

[additional signatures on next page]

CITY OF SAN MARCOS

By: _____
James R. Nuse, P.E., City Manager

Date: _____

ATTEST:

By: _____
Jamie Lee Pettijohn, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Michael Cosentino, City Attorney

Date: _____

**CITY OF SAN ANTONIO,
ACTING BY AND THROUGH ITS SAN ANTONIO WATER SYSTEM**

By: _____
Robert R. Puente, President/CEO

Date: _____

ATTEST:

By: _____
Becky Gonzalez, Executive Administrative Assistant

Date: _____

APPROVED AS TO FORM:

By: _____
Phil Steven Kosub, Senior Water Resources Counsel

Date: _____

Signatures continue on next page

TEXAS STATE UNIVERSITY – SAN MARCOS

By: _____
Denise M. Trauth, President

Date: _____

ATTEST:

By: _____
William Nance, Vice President for Finance and
Support Services, Texas State University-San Marcos

Date: _____

APPROVED AS TO FORM:

By: _____
Diane Corley, Associate General Counsel, Texas
State University System

Date: _____