



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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Dr. Robert Gulley, Program Manager
Edwards Aquifer Recovery Implementation Program
c/o Edwards Aquifer Authority
1615 N. St. Mary's Street
San Antonio, Texas 78215

Re: Implementing Agreements for Habitat Conservation Plans and Incidental Take Permits

Dear Dr. Gulley:

At their June 21, 2012, meeting the Edwards Aquifer Recovery Implementation Program (EARIP) Implementing Committee requested that the U.S. Fish and Wildlife Service (Service) provide additional guidance concerning the need for an Implementing Agreement in the development of a habitat conservation plan (HCP) and issuance of a possible incidental take permit (permit).

Section 10(a)(1)(B) permits include terms and conditions that require implementation of all measures described in the HCP submitted as part of the permit application. The permit, the application, and the HCP, therefore, describe the roles and responsibilities of each of the parties to the Federal permit.

Nothing in Federal statute or regulation requires execution of an Implementing Agreement as part of the HCP process or as a condition of issuing a permit. Service policy pertaining to Implementing Agreements, found in the Habitat Conservation Planning and Incidental Take Permit Processing Handbook (Handbook), repeatedly describes the development of such an agreement as optional and at the discretion of the Service's Regional Directors.

The creation of such an additional optional agreement that may fail to fully describe the roles and responsibilities that are well defined in the EARIP HCP may serve to confuse rather than clarify the intent and the commitments of the various parties to the permit. This determination on the part of the Service reflects the recommendation of our Solicitor's Office that an Implementing Agreement is not required or necessary for the EARIP HCP or issuance of a Section 10(a)(1)(B) permit.

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In the case that a permit applicant requires such an agreement, however, the Handbook provides a template that has been found acceptable by the Service so long as no provisions are added, deleted, or significantly modified. The template agreement language can be found in Appendix 4 to the handbook, which can be accessed online at: (<http://www.fws.gov/endangered/esa-library/index.html>).

Thank you for your continued assistance, and please contact me or Kevin Connally (512-490-0057x234) if there are any additional questions.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a long horizontal line extending to the right.

Adam Zerrenner
Field Supervisor