

Appendix A

to EARIP Implementing Agreement by and among

**Edwards Aquifer Authority, New Braunfels, San Marcos, San Antonio,
Texas State University – San Marcos, the Texas Parks and Wildlife Department and the
United States Fish and Wildlife Service**

Adaptive Management Procedures

Section 1. Purpose. To ensure the terms of the HCP are fully implemented, the Permittees and the Service will follow specific procedures for adaptive management of species protection during the term of the Permit. This *Appendix A* to the Implementing Agreement (Agreement Appendix) provides the procedural steps and responsibilities of the Permittees and other Stakeholders with respect to Adaptive Management decisions and the actions that will be taken as a result of such decisions. The provisions and terms in this Agreement Appendix are agreed to by the Parties and are incorporated in the EARIP Implementing Agreement as if fully stated in such Agreement. In this Agreement Appendix, each capitalized and other special term has the meaning assigned in the Implementing Agreement, unless the context specifically indicates otherwise, and references to any Section or subsection refer to the corresponding subdivision of this Agreement Appendix, unless another document is specified.

Section 2. EAA Responsibilities; Program Manager.

2.1. Management Responsibilities. Management of the implementation of the terms and conditions of the Permit, the Implementing Agreement, this Agreement Appendix, the FMA, and the HCP (collectively, the Program Documents) is the overall responsibility of the EAA in accordance with the terms of the Program Documents, except to the extent that certain responsibilities and roles are held solely or jointly by one or more Permittees or the Service, as provided in the Program Documents. The EAA will also (i) provide necessary staff support to the Steering Committee established as provided in Section 6, and to the Program Manager, appointed as provided in subsection 2.2; (ii) will cooperate and coordinate its management and implementation activities for the HCP with the Service, the other Permittees and the Adaptive Management Stakeholder Committee, appointed as provided in Section 7; and (iv) to the extent required under the Program Documents, obtain approval for its management and implementation activities from the Steering Committee established under Section 6..

2.2. Program Manager. The EAA, subject to Steering Committee approval as provided in Section 6, will employ a person whose sole job responsibility will be to direct, on behalf of the EAA, the management of the implementation of the HCP and the Adaptive Management Program. Although referred to in the Program Documents as the

“Program Manager,” the EAA will develop the job description, job title, responsibilities, accountability, and salary it determines, in its sole discretion, is appropriate for the EAA’s organization. The EAA will also designate a member of its staff authorized to serve as the Acting Program Manager in the event of the Program Manager’s temporary unavailability or incapacity, and any duties or acts assigned to the Program Manager in the Program Documents may be taken by the person thus appointed. The Program Manager will be the primary point of contact for the Permittees and with the Service.

Section 3. Phases of Adaptive Management. The Permittees and the Service will engage in Adaptive Management throughout the HCP, as more fully described in this Agreement Appendix, the HCP, and the Funding and Management Agreement. Phase One Adaptive Management will begin on the Effective Date and end on December 31, 2019. Phase Two Adaptive Management will begin on January 1, 2020, and continue for the duration of the Permit term.

Section 4. Biological Goals and Adaptive Management. The Permittees and the Service recognize and affirm that the Biological Goals established in Section 7.1 of the HCP are central to the consensus developed by Stakeholders during the Edwards Aquifer Recovery Implementation Program and that those goals should not be changed except in the limited circumstances described in the HCP. The Permittees and the Service also recognize that effective Adaptive Management will be critical to the success of the HCP.

Section 5. Adaptive Management Decisions. The Permittees and the Service anticipate the need for three levels of adaptive management decisions during the Permit term, as described in this Section 4.

5.1. Routine Adaptive Management decisions. Routine Adaptive Management decisions, are those decisions relating to (i) changes to program actions initiated in Phase One of the HCP that do not require an amendment of the Permit; (ii) or ongoing, day-to-day matters relating to the management and administration of such program actions.

5.2. Nonroutine Adaptive Management decisions. Nonroutine Adaptive Management decisions are those decisions relating to any changes to program actions initiated in Phase One of the HCP that require an amendment of the Permit, including any substantial alterations of the Biological Goals and Objectives that may be required under the limited circumstances described in the HCP.

5.3. Strategic Adaptive Management decisions. Strategic Adaptive Management decisions are those decisions relating to major alternative Conservation Measures to be undertaken in Phase Two, other than the presumptive action described in the HCP.

Section 6. Steering Committee. The Permittees will create and designate members of an Edwards Aquifer Implementation Program Adaptive Management Steering Committee (the

Steering Committee). The Steering Committee will be comprised of one representative from each Permittee, as voting members, and the Program Manager, as a nonvoting member. The Steering Committee will consider, prior to the hiring of the Program Manager, approval of the person proposed by the EAA for the position, and no person will be hired for the position unless thus approved. Within (60) sixty days of the Effective Date of the Permit, each Permittee will advise the Program Manager in writing of the name and contact information of its representative on the Steering Committee. The role of the Steering Committee is:

- 6.1.** to consult with and advise the Program Manager on routine Adaptive Management decisions proposed by the Program Manager;
- 6.2.** to consult with and advise the Program Manager on research and the development of models as necessary to support and inform Adaptive Management decision-making;
- 6.3.** to make recommendations to the governing bodies of the Permittees on nonroutine Adaptive Management decisions proposed by the Program Manager; and
- 6.4.** to make recommendations to the governing bodies of the Permittees on strategic Adaptive Management decisions proposed by the Program Manager for Phase Two of the HCP. Within thirty (30) days after the Effective Date of this Agreement and from time to time thereafter as necessary, each member of the Steering Committee shall, by written notice to the Program Manager, designate a Voting Representative who is authorized to vote and otherwise act in its behalf on matters before the Advisory Committee. Each member may appoint one or more alternates to act as its Voting Representative in the absence of its regular representative.

Section 7. Meetings of the Steering Committee. The Steering Committee will meet once each calendar quarter and at any other time upon the request of the Program Manager or any two Permittees. Meetings will be conducted at the official offices of the EAA or at any other location agreed upon by the Steering Committee. The Program Manager will provide reasonable notice of the meetings to the Permittees, and will post notice of any meeting on the EAA website. Meetings will be generally open to the public, but, with good cause, may be closed to the public at the request of the Program Manager or any two Permittees. Meetings of the Steering Committee are not subject to the Texas Open Meetings Act, but the Committee will make all efforts to provide reasonable notice of its meetings and conduct them open to the public. Except as otherwise provided in this document for resolution of specific issues, recommendations of the Steering Committee will be made by consensus.

Section 8. Stakeholder Committee. The Permittees will create, and invite Stakeholders to designate representatives to serve on, an Edwards Aquifer Recovery Implementation Program Adaptive Management Stakeholder Committee (the Stakeholder Committee). The role of the Stakeholder Committee will be to consult with and advise the Steering Committee on nonroutine Adaptive Management decisions proposed by the Program Manager and on proposed strategic

Adaptive Management decisions. The Service and the Permittees recognize that, with the exception of the Permittees, participation on the Stakeholder Committee is voluntary and cannot be compelled by the Service or the Permittees. However, to the extent possible, the Stakeholder Committee will consist of one representative from each of the Permittees and one representative from each of the following other Stakeholders:

- 8.1. Texas Commission on Environmental Quality;
- 8.2. Texas Parks and Wildlife Department;
- 8.3. Texas Department of Agriculture;
- 8.4. Texas Water Development Board;
- 8.5. Guadalupe-Blanco River Authority;
- 8.6. San Antonio River Authority;
- 8.7. South Central Texas Water Advisory Committee;
- 8.8. Bexar County;
- 8.9. CPS Energy;
- 8.10. Bexar Metropolitan Water District or its successor;
- 8.11. A holder of an initial regular permit issued to a retail public utility located west of Bexar County, to be appointed by the EAA;
- 8.12. A holder of an initial regular permit issued by the EAA for industrial purposes, to be appointed by the EAA;
- 8.13. A holder of an industrial surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;
- 8.14. A holder of a municipal surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;
- 8.15. A retail public utility in whose service area the Comal Springs or San Marcos Springs is located;
- 8.16. A holder of an initial regular permit issued by the EAA for irrigation, to be appointed by the commissioner of agriculture;
- 8.17. An agricultural producer from the Edwards Aquifer region, to be appointed by the commissioner of agriculture;

- 8.18. Environmental interests from the Texas Living Waters project, to be appointed by the governing body of that project;
- 8.19. Recreational interests in the Guadalupe River Basin, to be appointed by the Parks and Wildlife Commission;
- 8.20. A holder of an Edwards Aquifer Authority initial regular permit issued to a small municipality (population under 50,000) located east of San Antonio to be designated by the EAA;
- 8.21. Edwards Aquifer region municipal ratepayers/general public, to be designated by the Stakeholder Committee;
- 8.22. Guadalupe River Basin municipal ratepayers/general public, to be designated by the Stakeholder Committee;
- 8.23. A conservation organization, to be designated by the Stakeholder Committee; and
- 8.24. Nueces River Authority.

Section 9. Meetings of the Stakeholder Committee. Each of the Permittees and other Stakeholders listed in Section 7 may appoint a person to serve as its Stakeholder Committee represents, authorized to vote on its behalf, and such appointed person will become an Advisory Committee Member (Member) on the date the Program Manager receives written notification from the appointing entity of the appointments and the appointee's acceptance of the appointment. The Stakeholder Committee will meet twice each calendar year and at any other time upon the request of the Program Manager or of any two Permittees, or upon petition to the Program Manager by four members of the Stakeholder Committee. All meetings of the Stakeholder Committee will occur at the offices of the EAA or at another convenient location in the region. The Program Manager will post notice of any meeting of the Stakeholder Committee on the EAA website. Meetings will be generally open to the public, but may be closed to the public at the request of the Program Manager or any two members of the Stakeholder Committee. Written and electronic notice of each meeting will be sent to each member of the Stakeholder Committee. Meetings of the Stakeholder Committee are not subject to the Texas Open Meetings Act, but the Committee will make all efforts to provide reasonable notice of its meetings and conduct them open to the public.

Section 10. Stakeholder Committee Voting. Each Member of the Stakeholder Committee will have one vote until participation is resigned, or forfeited by absence from three consecutive meetings. Each Permittee or other Stakeholder having a representative on the Stakeholder Committee may appoint one or more alternates to act as its Stakeholder Committee representative in the absence of its regular representative.

Section 11. Procedures of the Stakeholder Committee. A quorum for any meeting of the Stakeholder Committee will be three-fourths of the total number of Members for whom the Program Manager has received the notification described in Section 9 not less than 7 days prior to the date of the meeting. The Stakeholder Committee will operate on a consensus basis to the maximum extent achievable and, in the absence of consensus, will require an affirmative vote of at least three-fourths (3/4) of the entire membership to approve any recommendation of the Stakeholder Committee for appointments to the Science Committee or for Adaptive Management recommendations. The Stakeholder Committee will elect officers and adopt procedures to govern its activities. Members will use the Program Operational Rules adopted by the EARIP Steering Committee, to the extent not inconsistent with this Appendix Agreement and to the extent applicable, until new procedures are adopted.

Section 12. Science Committee. The Permittees will create and appoint qualified persons to serve as members of an Edwards Aquifer Recovery Implementation Program Adaptive Management Science Committee (the Science Committee). The Service and the Permittees recognize that participation on the Science Committee is voluntary and cannot be compelled by the Service or the Permittees. However, to the extent possible, the Science Committee will consist of an odd number of not fewer than 7 or more than 15 members who have technical expertise in one or more of the following areas: (i) the Edwards Aquifer or its management; (ii) the Comal Springs and River Ecosystem; (iii) the San Marcos Springs and River Ecosystem or (iv) the Covered Species.

Section 13. Membership on the Science Committee. The Steering Committee and the Stakeholder Committee will each select an equal number of members of the Science Committee and will coordinate with one another in making selections in order to ensure balance and proper coverage of areas of expertise. The Steering Committee and the Stakeholder Committee will jointly select one additional member of the Science Committee. In the case of a vacancy on the Science Committee, the committee, or committees, that made the initial appointment for that position will appoint a replacement member.

Section 14. Organization of the Science Committee. The Science Committee will be organized into two subsets of approximately equal size based on primary expertise in biological sciences and in hydro-geological sciences. The members of the Science Committee are expected to provide independent and unbiased advice based on their best scientific judgment. . The Program Manager, the Steering Committee, and the Stakeholder Committee may request an evaluation or recommendation from the entire Science Committee or an appropriate subgroup of the Science Committee on any routine Adaptive Management decision proposed by the Program Manager. A recommendation from the entire Science Committee shall be sought prior to taking action on any proposed nonroutine or strategic Adaptive Management decision. The Science Committee and its subsets will operate by a collaborative process designed to achieve consensus and, in the absence of full consensus, provide a summary of competing positions. The Science Committee will provide advice to the Program Manager, Steering Committee, or Stakeholder

Committee in response to any request and, in the absence of full consensus, provide a summary of competing positions. The EAA will enter into contracts with members of the Science Committee as necessary and reasonable to secure their services consistent with the EAA's annual budget for the Program.

Section 15. Procedures for Routine Adaptive Management Decisions. Routine Adaptive Management decisions on a day-to-day basis not involving the expenditure of EAA funds will be made by the Program Manager. Routine Adaptive Management decisions involving the expenditure of EAA funds dedicated to the Program will be made according to EAA procurement practices and procedures. Nothing in the Implementing Agreement, the Permit, the FMA, this AMP, or the HCP affects the administration or operations of the EAA in any manner nor shall the approval of the other Permittees or the Service be required for any decisions within the jurisdiction of the EAA and not addressed in the HCP. No other Permittee will require the approval of any other Permittee or the Service for any decision within the jurisdiction of that Permittee and not addressed by the HCP or requiring funding by the EAA. However, any decision within the jurisdiction of any other Permittee that is addressed by the HCP or requires funding by the EAA will require the approval of the Program Manager, the General Manager or other staff member of the EAA, or the Board of Directors of the EAA as may be appropriate.

Section 16. Procedures for Nonroutine Adaptive Management Decisions. Nonroutine Adaptive Management decisions will be made in accordance with the procedures stated in this Section 16.

16.1. A nonroutine Adaptive Management proposed decision may be brought forward by the Program Manager, any Permittee, or any three members of the Stakeholder Committee.

16.2. A nonroutine Adaptive Management proposal will be forwarded in writing to the Program Manager.

16.3. Within fourteen days of receipt of a nonroutine Adaptive Management proposal, the Program Manager will call a meeting of the Stakeholder Committee. With the consensus agreement of the Stakeholder Committee, obtained through polling of the members, the Program Manager may delay the meeting by up to an additional fourteen days. The Program Manager must provide each Member of the Stakeholder Committee a copy of the proposal and the written recommendation of the Science Committee, along with any other available supporting information, in advance of the meeting.

16.4. At the meeting to consider the nonroutine Adaptive Management proposal, the Stakeholder Committee will seek to achieve consensus on a recommendation regarding the proposal.

Comment [s1]: a. Myron Hess has proposed the following alternative language for the balance of this paragraph: "Those routine adaptive management decisions will be made consistent with the best available science and the Program Manager will consult the Science Committee for input, and shall document that input in writing, prior to making any decision that has the potential to significantly affect the well-being of any Covered Species. Nothing in the Program Documents shall be interpreted as requiring the EAA to obtain the approval of the other Permittees or the Service for any decision within the jurisdiction of the EAA that is not substantially related to implementation of the HCP. Nothing in the Program Documents shall be interpreted as requiring any other Permittee to obtain the approval of another Permittee or the Service for any decision within the jurisdiction of that Permittee that is not substantially related to implementation of the HCP. However, any decision within the jurisdiction of any other Permittee that is substantially related to implementation of the HCP or requires funding by the EAA will require the approval of the Program Manager."

Comment [s2]: a. Mike Gershon has proposed the following alternative language for the balance of this paragraph: Routine Adaptive Management decisions on a day-to-day basis will be made by the Program Manager after consultation with Permittees in accordance with the procedures set forth in the Funding and Management Agreement. The EAA shall not require the approval of the other Permittees or the Service for any decision within the jurisdiction of the EAA that does not implicate the HCP and that does not require EARIP funding. No other Permittee will require the approval of any other Permittee or the Service for any decision within the jurisdiction of that Permittee that does not implicate the HCP and that does not require EARIP funding. However, any decision within the jurisdiction of any other Permittee that does implicate the HCP and requires EARIP funding must be brought to the attention of the Program Manager. The Program Manager has authority to disapprove of this decision, which disapproval may be appealed to and overruled by a majority vote of the Steering Committee.
b.

Comment [s3]: I believe the three alternate versions of this section reflect three substantive issues that requires further discussion. The first issue is the degree to which the Science Committee would be called upon for input into a routine Adaptive Management decision. The second issue is the degree to which the EAA and other Permittees will require the approval of other Permittees or the Service to engage in their governmental functions. The third issue is the nature of the Program Manager position.

16.5. The Stakeholder Committee will have 60 days from the date of its initial meeting on the nonroutine Adaptive Management proposal to develop, approve, and submit its recommendation on the proposal. The Stakeholder Committee may, for good cause, request more time to submit its recommendation, and such request will not be unreasonably denied by the Steering Committee. Any recommendation of the Stakeholder Committee must be adopted by at least a three-fourths (3/4) majority of the entire Stakeholder Committee membership. In the absence of consensus, the recommendation of the Stakeholder Committee will include a succinct summary of the positions of the non-supporting members. The Stakeholder Committee will deliver its recommendation on the proposal in writing to the Program Manager. The Program Manager will deliver the recommendation of the Stakeholder Committee to the Steering Committee and the Service.

16.6. The Program Manager will call a meeting of the Steering Committee within fourteen days of receipt of the Stakeholder Committee's recommendation.

16.6.1. If the proposal and recommendation involve a change to the Biological Goals contained in the HCP, the Steering Committee may either (a) **unanimously** accept the recommendation of the Stakeholder Committee and commence discussion with the Service on the proposal, or (b) **unanimously** reject the recommendation of the Stakeholder Committee and **commence or decline** to commence discussion with the Service on the proposal. In the event that a recommendation of the Stakeholder Committee is rejected by the Steering Committee, the Steering Committee will provide a written explanation of the rejection to the Program Manager, who will forward the explanation to the Stakeholder Committee and to the Service. In the absence of a Stakeholder Committee recommendation in support of a change in the Biological Goals unanimous action by the Permittees is required to move forward with the change.

16.6.2. No Biological Goal can be **changed** without unanimous consent of the Steering Committee.

16.6.3. If the proposal and recommendation involve a change to Phase One actions, the Steering Committee will consider the recommendation, if any, of the Stakeholder Committee. However, neither the Steering Committee nor any individual Permittee who would be primarily affected by the change will be required to accept any recommendation of the Stakeholder Committee. In the event that any recommendation of the Stakeholder Committee is rejected by any member Permittee of the Steering Committee, the Permittee or Permittees will provide a written explanation of the rejection to the Program Manager, who will forward the explanation to the Stakeholder Committee and to the Service. After consideration of any recommendation by the Stakeholder Committee, the

Comment [s4]: Myron Hess has struck "unanimously" in his comments. This seems to be a substantive change that requires discussion.

Comment [s5]: Darcy Frownfelter has suggested clarification is required here.

Comment [s6]: 1. Myron Hess proposes to substitute the following phrase for the balance of the paragraph: "over the objection of a Permittee if the effect of the change would be primarily to the detriment of that individual Permittee." This is a substantive issue that requires further discussion.
2.

Permittees collectively or, in the case of a change that would affect primarily one single Permittee, an individual Permittee that would be primarily affected, after notice to the Program Manager, may commence discussion with the Service on any proposed change to a Phase One Action implement the change if approved by the Service so long as the change is not substantially less likely to achieve the Biological Goals than the Phase One Action as described in the HCP.

16.6.4. No Permittee may be compelled to take any nonroutine Adaptive Management action not included in the HCP.

16.6.5. The right of any member of the Stakeholder Committee to protest any Permit amendment under consideration by the Service is recognized.

Section 17. Research and Modeling for the Phase Two Decision. The Steering Committee will ensure that research and modeling sufficient to support and inform a proposal for an Adaptive Decision for Phase Two is complete and all relevant data are compiled by the Program Manager no later than December 31, 2017. Research and modeling to be overseen by the Steering Committee will consist of the following:

[Identify studies and models].

The results of the research and modeling, along with the data compiled by the Program Manager, will be submitted for review to the Science Committee no later than January 15, 2018, and may be submitted for third-party peer review at the discretion of the Program Manager upon request by the Science Committee, the Steering Committee, or the Stakeholder Committee. All peer review and Science Committee review will be completed no later than May 1, 2018. The Program Manager will forward copies of any third-party peer review report to the Steering Committee, Stakeholder Committee, and Science Committee no later than June 1, 2018, and solicit comments on the report for sixty (60) days. The Program Manager will take action on the comments the Program Manager deems appropriate with the goal of achieving consensus on the data and research and modeling results to the extent possible and practicable. On or before December 31, 2018, the Program Manager will distribute to the Steering Committee, the Stakeholder Committee and the Science Advisory Committee final copies of all compiled data and research and modeling results reflecting comments and action, if any, taken in response to comments.

Section 18. Procedures for the Phase Two Strategic Adaptive Decision. Strategic adaptive decisions regarding Phase Two of the HCP will be made in accordance with the procedures stated in this Section 18. No later than January 31, 2019, the Program Manager will call a meeting of the Stakeholder Committee to facilitate discussion of the research and modeling results and data collected and the need for development of a strategic adaptive proposal.

18.1. A recommendation for an strategic adaptive proposal may originate with the Program Manager, the Steering Committee or any member of the Stakeholder Committee. A recommendation for a strategic adaptive proposal will be forwarded in writing to the Program Manager. The Permittees will not pursue a proposal without first presenting it for consideration by the Stakeholder Committee.

18.2. If a recommendation for a strategic adaptive proposal is received later than January 31, 2019, the Program Manager will convene, within fourteen days of receipt of the recommendation a meeting of the Stakeholder Committee. With the consensus agreement of the Stakeholder Committee, obtained through polling of the members, the Program Manager may delay the meeting by up to an additional fourteen days. A copy of the proposal will be provided to each member of the Stakeholder Committee in advance of the meeting. The Program Manager may include multiple and alternative strategic adaptive proposals for consideration by the Stakeholder Committee at a single meeting. For a recommendation for a proposal received prior to January 31, 2019, the Program Manager will present it for initial consideration by the Stakeholder Committee on a convenient time schedule designed to ensure completion of review in a timely and efficient manner.

18.3. At the meeting to consider the strategic adaptive proposal, the Stakeholder Committee will seek to achieve consensus on a recommended decision.

18.4. The Stakeholder Committee will have one hundred eighty (180) days from the date of its initial meeting to develop a recommendation on the Phase Two proposal. The Stakeholder Committee may request additional time to develop a recommendation. Approval of the request for additional time will be granted at the sole discretion of the Steering Committee, but will not be unreasonably withheld. However, in no event will the Stakeholder Committee be required to make a recommendation on a strategic adaptive proposal without the opportunity to consider formal input from the Science Committee on the proposal. Any recommendation of the Stakeholder Committee on a strategic adaptive proposal must be adopted by a three-fourths (3/4) majority of the Stakeholder Committee membership. The Stakeholder Committee will deliver its recommendation in writing to the Program Manager. The Program Manager will deliver a copy of the recommendation to the Steering Committee and to the Service.

18.5. The Program Manager will call a meeting of the Steering Committee within fourteen (14) days of receipt of the recommendation from the Stakeholder Committee.

18.5.1. The Steering Committee may either (a) unanimously accept any recommendation of the Stakeholder Committee and, if the recommendation was supportive of the proposal, commence discussion with the Service on the proposal; or (b) unanimously reject any recommendation of the Stakeholder

Committee and, if the recommendation was not to support a proposal, commence or decline to commence discussion with the Service on the proposal. In the event that a recommendation of the Stakeholder Committee is rejected by the Permittees, the Permittees will provide a written explanation of the rejection to the Program Manager, who will forward the explanation to the Stakeholder Committee and to the Service.

18.5.2. If the Steering Committee fails to take unanimous action to commence discussion with the Service on a Phase Two strategic adaptive proposal on or before December 31, 2019, the Permittees will undertake the Phase Two action described in the HCP.

18.5.3. No Permittee may be compelled to take any Phase Two strategic adaptive action not included in the HCP.

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