

To: Members of the EARIP Steering Committee and Stakeholders

From: Robert Gulley, EARIP Program Director

Date: October 10, 2011

**Summary of Edwards Aquifer Recovery Implementation Program
Habitat Conservation Plan Draft Program Documents**

The Document Summaries attached are summaries of the provisions in the current drafts of (A) the Implementing Agreement and (B) the Funding and Management Agreement prepared by the EARIP Implementing Agreement Drafting Work Group, chaired by Steve Kosub.

The Document Summaries are distributed to the EARIP Steering Committee and Stakeholders with the understanding that the documents summarized are subject to final revision. The Summaries are for convenience only and the applicable provision in the respective draft agreement controls over any abbreviated description in the summary.

Attachments:

Part A – Summary of the Implementing Agreement

Part B – Summary of the Funding and Management Agreement

Part A. The Implementing Agreement (IA).

The Implementing Agreement (IA) is the comprehensive agreement for implementation of the HCP. The Parties to the IA are:

1. **the United States Fish and Wildlife Service (Service)**

and the five entities who are jointly applying for the Permit (**Permittees**), as follows:

2. **Edwards Aquifer Authority (EAA),**

3. **City of New Braunfels,**

4. **San Antonio Water System (SAWS),**

5. **City of San Marcos, and**

6. **Texas State University – San Marcos (University).**

Provisions of the Implementing Agreement.

Recitals –

Recitals A through J provide background descriptions of the Aquifer, the Springs, the **Covered Species** (the listed species for Comal Springs and San Marcos Springs, the petitioned species for Comal Springs and San Marcos Springs), the EAA, the EARIP, the Permit Application, and its anticipated approval by the Service.

Recital K states the purposes of the IA:

- to ensure implementation of the terms of the HCP and other Program Documents;
- to describe remedies if a Party fails to perform its obligations;
- to provide the Service’s assurance that (i) so long as the Parties perform their obligations, the Service will not impose additional Conservation Measures, except as provided in the IA [the Services “No Surprises” rule]; and (ii) that compliance with the HCP and the IA is sufficient for the issuance of the Permit..

Article One – Definitions. Capitalized terms in the IA defined. Other terms have meaning assigned in Endangered Species Act and related regulations. The defined terms include, among others, the following key terms:

“Adaptive Management Process” or AMP –the process described in the FMA for adapting Conservation Measures during the Permit term

“Changed Circumstances” –as defined in the HCP

“Conservation Measures”—as defined in the HCP

“Permittees” – EAA, New Braunfels, SAWS, San Marcos, and the University

“Program Documents” –the Implementing Agreement, the Funding and Management Agreement, the HCP, the Application, and the Permit

“Unforeseen Circumstances” –as defined in the HCP, the ESA and applicable regulations

Article Two – Incorporation.

2.1. The recitals of the IA are incorporated.

2.2. The HCP terms are incorporated. In the event of direct conflict, the IA will control over the terms of the FMA; the FMA will control over directly conflicting terms in the HCP. All other provisions in all the Program Documents will be interpreted to be complementary to one another.

2.3. Terms in Permit control over terms in the other Program Documents.

Article Three – HCP and Adaptive Management.

3.1. The HCP has Phase One (first 7 years) and Phase Two (next 8 years). The Conservation Measures provided in the HCP will be monitored and evaluated.

3.2. Importance of Adaptive Management. Science-based management process that adapts to changing information about the Covered Species (Adaptive Management Process or AMP) will be utilized, as provided in the FMA.

3.3. AMP Adjustments and Changes. The AMP requires the Permittees to make appropriate adjustments to the Conservation Measures for

3.3.1. Changed Circumstances (*see* Sec. 8.7.6 of IA);

3.3.2. Unforeseen Circumstances (*see* Sec.8.7.3 of IA).

Article Four – Requirements for Permit Issuance.

4.1. The Conservation Measures performed by the Permit will ensure (i) that any take occurring as a result of Covered Activities in the Permit Area will be incidental to otherwise lawful activities; (ii) that the impacts of the take will be minimized and mitigated; (iii) and that the take will not appreciably reduce the likelihood of survival and recovery of the Covered Species in the wild.

4.2. Cooperative Efforts. Each of the Parties will perform certain specific tasks relating to the Conservation Measures; all will cooperate to minimize and mitigate the effects of take which may be caused by Covered Activities.

Article Five – Effective Date and Term.

The IA is effective on the date the Service issues the Permit and will remain effective for the term of the Permit and any extension.

Article Six – Funding and Management.

6.1. The FMA. The HCP will be managed, administered and funded for as provided in the FMA.

6.2. Commitment to Funding Obligation. By executing the IA, each Permittee commits to carry out that Permittee's Conservation Measures and to be responsible for obtaining funding as described in the FMA. No Permittee will be required to expend funds in connection with the Program Documents in excess of that Permittee's commitment in the FMA.

6.3. Notification to Service. A Permittee will promptly notify the other Permittees and the Service if its funding resources materially change.

Article Seven – Responsibilities of the Parties for HCP Implementation; Responsibilities of the Service for Monitoring; and Responsibilities of the Department.

7.1. The Parties acknowledge that the HCP will achieve its purpose if the terms of the Program Documents are implemented.

7.1.2. The Permittees will, subject to adequate funding, undertake all Conservation Measures set forth in Ch. 5 of the HCP.

7.1.3. The Parties will submit Annual Reports on HCP activities and include data on any take.

7.2. Department. The Department will perform Conservation Measures assigned to it under Ch. 5 of the HCP and cooperate in the preparation of the Annual Reports.

7.3. Service. The Service will (i) cooperate and provide technical assistance to the Permittees; and (ii) monitor Permittees' implementation of the Permit and the HCP.

Article Eight – Remedies and Enforcement.

8.1. The Parties will work together in **good faith** to resolve disagreements by informal methods. **8.2.** A Party may allege default by another Party, and the defaulting Party will have reasonable opportunity to cure.

8.3. Limited Liability.

8.3.1. No Party will be liable in monetary damages to any other Party or other person for any breach of the Program Document. Nevertheless, the Parties retain liability they would possess for their acts or failures to act if the IA did not exist. Parties retain liability they may possess as an owner of interests in land. **The Service** will not seek civil or criminal penalties for incidental take of the Covered Species that is in accordance with the terms of the Permit.

8.3.2. Injunctive Relief. The Parties acknowledge that the Covered Species are unique and that their loss would result in irreparable damage to the environment; therefore injunctive and temporary relief may be appropriate to ensure compliance with this IA.

8.3.3. No Allocation. The Parties acknowledge that the possible decline of species and habitats in the Permit Area could be caused by many factors, and therefore have not separately quantified specific impacts any person's covered Activities may have on the Covered Species.

8.4. Permit Severability. Any partial severability must maintain the relative balance of benefits of the Parties or the Parties will attempt to negotiate a modification of the IA.

8.5. Suspension of Permit Coverage. Service may suspend permit coverage in whole or in part in the event of a material violation of the Permit of the IA. A suspension may affect a Party who is in compliance if the Service determines that the noncompliance by another Party materially affect compliance with relevant Permit issuance criteria. Procedures applicable to any suspension will be those in effect at the time of the suspension, provided that a Permittee will have the regulatory procedural rights applicable on the Effective Date of the IA.

8.6. Permit Revocation. The Service will not revoke for any reason except those listed in regulations or unless the Covered Activities are inconsistent with the criteria in applicable federal law and the inconsistency has not been remedied. The Service may pursue partial revocation.

8.7. Limitations and Extent of Enforceability.

8.7.1. No Surprises Rule applies—the Covered Species are adequately addressed by the HCP.

8.7.2. Permittees will implement Additional Conservation Measures in the HCP in response to **Changed Circumstances**.

8.7.3. Responses to Unforeseen Circumstances. The Service will comply with applicable regulations in the event of an Unforeseen Circumstance. Permittees will not be required to undertake Additional Conservation Measures not already provided for in the HCP without their consent. Any Additional Conservation Measures will not require commitment of additional land, water, or financial compensation or any additional restriction on the use of land, water, or other natural resources otherwise available for development or use under the HCP. Cost of any such additional measures will be funded in accordance with the FMA.

8.7.4. Avoidance of Effect on Permittees. Service will consider all practical alternatives and will endeavor to pursue and adopt measures that will have the least effect on the Permittees and their constituents.

8.7.5. Cooperation of Permittees with Service in event of Unforeseen Circumstances.

8.7.6. Remedial Measures for Changed Circumstances. Affected Permittees will give notice to Program Manager and other Permittees as soon as practicable after Changed Circumstances occur.

8.7.7. Private Property Rights and Legal Authorities Unaffected by terms of the IA.

8.7.8. Enforcement Discretion of the Service. Service will craft remedies that do least harm to the overall functioning and implementation of the Permit.

Article Nine -- Third Party Provided with Incidental Take Coverage.

9.1. Incidental Take. Coverage for incidental take of Covered Species for Covered Activities or Conservation Measures is available to

- (1) Permittees;
- (2) Persons authorized by EAA Act and rules to withdraw Aquifer water who are in compliance with the Act and rules;
- (3) The Department for activities related to state scientific areas and to implementing Conservation Measures;
- (4) Persons that support or facilitate recreational activities in the Permit Area in conformance with all conditions in a Certificate of Inclusion issued by New Braunfels, San Marcos, or the University; and persons who participate in recreational activities in

the Permit Area in conformance with all applicable rules of New Braunfels, San Marcos, the University, or the Department; and

(5) Other persons undertaking Covered Activities or Conservation Measures who are (i) under control of that Permittee, and in compliance with the Permit, this Agreement, and the HCP; (ii) under contract with a Permittee; or (iii) subject to a Certificate of Inclusion issued by the Permittee for the jurisdiction within which the activity is to occur pursuant to Sec. 10.2.

9.2. Certificate of Inclusion.

9.2.1. Purpose and Applicability –to provide persons whose activities fall under Section 9 of ESA the option of complying with the Permit instead of obtaining a separate Section 9 permit, and thus obtain incidental take coverage under this IA. Such persons may apply to a Permittee for a Certificate of Inclusion.

9.2.2. Development of Standards and Procedures. Each Permittee that accepts applications will issue Certificates of Inclusion in accordance with Chapter 5 of the HCP and with this Chapter 10 of the IA. A Permittee may establish an application fee schedule or charge fees on a case-by-case basis.

9.2.3. Application Process. Applicants must submit detailed description of proposed activity, map, analysis of impact to Covered Species, and fee and agree to terms and conditions of issuance. Permittee will encourage compliance with HCP; may deny application if it determines that the inclusion is not consistent with the Biological Goals and Objectives; Permittee will conduct assessment and evaluation of application.

9.2.4. Issuance of Certificate of Inclusion. If application is approved, Certificate will be signed and recorded and thereafter applicant will be a Third Party Provided with Incidental Take Coverage. A breach of the obligation imposed upon a Certificate holder will not be a violation by the Permittee issuing the Certificate.

9.2.5. Terms of Certificate of Inclusion. A Third Party will have incidental take coverage only to the extent the person is in full compliance with the Certificate, the Permit, the Program Documents, standards of the issuing Permittee., and all other applicable requirements. Permittees will include in the Certificate specific provisions (in paragraphs numbered 1 through 5) for cure of breach, term (up to two years), posting of the recorded Certificate, and transfer.

9.2.6. Notice Required After Issuance of Certificate of Inclusion. Any Permittee issuing a Certificate will promptly notify and within 30 days provide a copy to the Service, the Implementing Committee, and the Program Manager.

Article Ten -- General Provisions.

10.1. Response Times. Parties will use reasonable efforts to respond to written requests within 45 days.

10.2. No Partnership.

10.3. Nullification of Agreement.

10.4. Successors and Assigns.

10.5. Notice.

10.6. Entire Agreement.

10.7. Amendment.

10.8. Preparation by All Parties.

10.9. Availability of Funds.

10.10. Multiple Original Counterparts.

10.11. Third Party Beneficiaries.

10.12. Relationship to the ESA and Other Authorities.

10.13. References to Regulations.

10.14. Changes in Environmental Laws.

10.15. Headings.

10.16. Faxed Signatures.

10.17. Further Instruments.

10.18. Applicable Law.

10.19. No Admission.

10.20. General Obligations of Parties.

10.21. Authority.

(The IA provides for execution on behalf of EAA, City of New Braunfels, City of San Marcos, San Antonio Water System, Texas State University-San Marcos, Texas Parks and Wildlife Department, and US Fish and Wildlife Service. Other State agencies sign solely for the purposes

of Section 1.26A (d) (3) of the EAA Act: Texas Commission on Environmental Quality, Texas Department of Agriculture, and Texas Water Development Board.)

Part B. The Funding and Management Agreement (FMA).

The Funding and Management Agreement (FMA) is the agreement among the five Permittees for the management and funding of the undertakings they agree to perform in the Implementing Agreement (IA) by and among the Permittees and the Service. The FMA is one of the Program Documents, along with the Application, the HCP, the IA, and the Permit. The FMA will be executed contemporaneously with the IA and submitted to the Service along with the Application, the HCP, the IA, in anticipation of the issuance of the Permit by the Service.

Parties to the FMA.

The five Permittees are the Parties to the FMA:

Edwards Aquifer Authority (EAA)

City of New Braunfels

San Antonio Water System (SAWS)

City of San Marcos

Texas State University – San Marcos (University)

Provisions of the FMA.

Recitals

Recital A states the Purpose of the FMA: to provide the terms of the Parties for managing and funding the EARIP HCP to support the Parties' Application for an incidental take permit (Permit) by the Service and to provide for the adaptive management process (AMP) relating to the species protected by the HCP and the continuing involvement of Aquifer stakeholders in making certain AMP decisions.

Recitals B and C describe the SB 3 direction for the EAA and the EARIP and the Stakeholders' cooperative development of the HCP and Application.

Recital D states the independent determinations by each Party to jointly submit the Application and to enter into the related agreements, including the FMA.

Recital E states that the HCP has two phases and provides for an AMP, described in Article Seven of the FMA.

Article One – Definitions and Other References.

Capitalized terms in the FMA are defined and are, to the extent applicable, consistent with the definitions of terms in the IA.

Article Two – Permit Application and Program Management

2.1. Application for Permit will be made jointly by the Parties on or about December 1, 2011.

2.2. General Management. The EAA has responsibility for general management and oversight of the program for implementation of the Permit and HCP (Program), subject to the duties held by the other Parties.

2.3. Program Manager. EAA will employ a Program Manager to direct, under the supervision of the EAA General Manager, the management of the Program.

2.3.1. EAA will involve other Parties in hiring the Program Manager.

2.3.2. Program Manager's duties and responsibilities prescribed. They include cooperating with the Implementing Committee, the Service, Stakeholders, and Science Committee, and to oversee compliance with the Permit.

2.3.3. EAA may appoint Acting Program Manager for temporary periods.

Article Three – Duties and Responsibilities of the Parties.

3.1. Parties' Collective Duties are to implement the Conservation Measures and the AMP; to provide for funding of research and planning costs associated with Conservation Measures and AMP; and to participate in any federal program that may provide funding.

3.2. Each Party's Individual Duties are to undertake each Conservation Measure assigned in Chapter 5 of the HCP; to take appropriate actions for any Certificates of Inclusion it issues; to perform AMP duties; and to comply with the terms of the FMA to fund and manage the Program.

Article Four – Program Work Plan and Budget Approvals.

4.1. Implementing Committee will convene its organizational meeting as soon as practicable after **January 1, 2012**.

4.2. By **March 1, 2012**, the Implementing Committee will approve a **Comprehensive Phase One Work Plan** with descriptions, schedules and cost estimates for the Phase One Conservation Measures.

4.3. By **March 1, 2019**, the Implementing Committee will approve a **Comprehensive Phase Two Work Plan** with descriptions, schedules, and cost estimates for the Phase Two Conservation Measures.

4.4. By **April 15, 2012**, each Party will submit to the Program Manager and Implementing Committee its **Annual Party Work Plan and Cost Estimate** for the Conservation Measures the Party is obligated to undertake during 2013. The EAA's Annual Party Work Plan and Budget will include the plan and budget of the Program Manager's activities for the budget year.

4.5. By **June 30, 2012**, the Implementing Committee and Program Manager will consolidate the work plans into an **Annual HCP Budget** and forward it to the EAA.

4.6. In **2013 and subsequent years** the submittal schedule will be consistent with the schedule for 2012, unless the Implementing Committee and EAA establish a different schedule.

4.7. **Limitation** applies if sufficient funds are not available for the Program.

Article Five – Program Costs and Funding.

5.1. **Implementation Costs** of the HCP will be funded by aquifer management fees collected by the EAA from permit holders.

5.2. EAA Funding Obligation.

5.2.1. EAA will provide funding at levels in Table 7.1 of the HCP; no annual increase will be greater than 2 %.

5.2.2. EAA will assess fees to provide funding in excess of 5.2.1 amount. If funds collected through the fees are insufficient, EAA will notify the Implementing Committee, which will amend the Budget to incorporate less costly measures.

5.2.3. EAA may collect Program Aquifer Management Fees prior to Budget submittal in order to ensure sufficient HCP Program funding on January 1, 2013.

5.3. **Funding Contributions by Other Persons and Entities** acknowledged. Parties will pursue applications for grants from state and federal agencies.

5.4. **The HCP Program Account.** By October 1, 2012, EAA will create a restricted account for the deposit of amounts received for the Program, to disburse funds for Program operating costs, and to hold reserve funds. The Program Account will have two funds: the Operational Fund and the Reserve Fund.

5.5. **Sources of Funds in HCP Program Account.** Amounts deposited in the account include the aquifer management fees collected by EAA, funds from grants and contributions, earnings on investment of funds in the HCP Account. Amounts held in the Reserve Fund may be

accumulated up to a specified **cap** (the amount of the cap is under discussion). Any excess amount accumulated in the Reserve Fund above the cap will be offset by reductions in the Aquifer Management Fees collected from permit holders in subsequent years.

5.6. Uses of Funds in HCP Account.

5.6.1. Funds may be used for HCP Program administration costs incurred by the EAA for start-up costs during 2012. The 2012 costs may not exceed \$375,000.00.

5.6.2. Funds may be used for Conservation Measures in Chapter 5 of HCP.

5.6.3. Funds may be used for AMP costs.

5.6.4. Funds may be used for participation in any federal program that provides funding for the HCP.

5.6.5. Funds may not be used for a Party's internal administrative costs not directly required for the discharge of a Party's administrative obligations described in this Agreement.

5.6.6. Funds may be used for MS4 costs to the extent they implement Conservation Measures which exceed the minimum requirement for obtaining the MS4 permit.

Article Six – Applications for HCP Funding.

6.1. Applications from a Party for HCP Funding.

6.1.1. Party's application for funding must be in affidavit form with detail as prescribed.

6.1.2. Application must be submitted by **October 1** of preceding year.

6.1.3 EAA will approve within 30 days of Board approval of its annual budget, provided application conforms to requirements in Work Plan and other requirements.

6.1.4. EAA may withhold funding if available Program funding is insufficient.

6.1.5. EAA will notify applicant.

6.1.6. EAA may delegate to the General Manager its authority to take action on an application for funding.

6.1.7 Applicant may amend application.

6.1.8-- EAA will make disbursements only through a Program Funding contract.

6.2. Program Payments—invoices and receipts required.

- 6.2.1.** Party submits invoice with documentation.
- 6.2.2.** Party submits receipts in accordance with Program Funding contract.
- 6.2.3.** Cost overruns will be justified and funded only if funds are available.
- 6.3. Reduction or Termination of EAA Funding Obligation.** Ends when Permit expires and on date alternative funding is sufficient.
- 6.4. Alternative Funding.** Provides procedures for collection and disbursement of revenue from sales tax or other funding source.
 - 6.4.1.** Administrator of tax or other funding source will be responsible.
 - 6.4.2.** Alternative funds will be applied first to Conservation Measures.
 - 6.4.3.** Any Excess funds will be used only for approved purposes.
- 6.5. Refund Upon Termination of the Agreement** goes pro rata to permit holders and others who paid.

Article Seven – Adaptive Management Process

- 7.1. Purpose** is to provide procedural steps and responsibilities of Parties for AMP decisions and actions. AMP decision does not affect any Party's non-AMP decisions and activities.
- 7.2. EAA Responsibilities.**
 - 7.2.1. Management responsibilities of EAA.** Include providing staff to support Implementing Committee, Stakeholder Committee, Science Committee, and Program Manager; coordinating its management and implementation activities with the Service and the three Committee; and obtain approvals as required..
 - 7.2.2. Procurement** for HCP will be in compliance with EAA procedures.
- 7.3. Phases of Adaptive Management.** Phase One adaptive management will continue as long as the activities initiated in Phase One are ongoing. Phase Two adaptive management will begin not later than January 1, 2020, and continue for duration of Permit and any extension.
- 7.4. Long Term Biological Goals and Key Objectives, Flow-Related Objectives and Adaptive Management** are affirmed as central to the consensus developed by Stakeholders and will not be changed except in manner described in HCP. Parties also recognize that effective adaptive management will be critical to success of HCP.

7.5. Monitoring. Parties, with comment from Science Committee and the Department, will develop a monitoring program to evaluate compliance with HCP; determine if Long Term Biological Goals and Objectives are being met; and provide scientific and other information for the AMP. Monitoring Report will be part of each Annual Report. Program Manager may engage technical assistance to ensure effective monitoring.

7.5.1. Compliance Monitoring to verify Parties are carrying out terms of the Program Documents.

7.5.2. Effects and Effectiveness Monitoring will evaluate the success of the Program.

7.5.3. Monitoring Reports will be submitted to Service.

7.5.4. Technical Assistance may be engaged by Program Manager for monitoring.

7.6. AMP Decisions. Three levels specified.

7.6.1. Routine AMP Decisions are those relating to changes to Conservation Measures that do not require an amendment of the Permit; and ongoing management and administrative matters.

7.6.2. Nonroutine AMP Decisions are those decisions relating to changes that require a Permit amendment; any discontinuation in Phase Two of Phase One Measures; and certain other decisions that may require a Permit amendment.

7.6.3. Strategic AMP Decisions are those that relate to Conservation Measures to be undertaken in Phase Two other than the Conservation Measures initiated in Phase One.

7.7. Implementing Committee will be established by the Parties.

7.7.1. Membership on Implementing Committee will include one representative from each Permittee as **voting members**; and may include **nonvoting members** who contribute not less than \$400,000 to HCP Program Account annually, as the minimum annual contribution amount may be increased. No annual increase will be greater than 2%.

7.7.2. Designation of Representatives by each Party or contributor will be within 60 days; the committee will elect officers and adopt procedures.

7.7.3. Duties of Implementing Committee specified in (a) through (e); include advising Program Manager on Routine Decisions; recommending on Nonroutine and Strategic AMP Decisions.

7.7.4. Meetings of Implementing Committee will be at least once each quarter; open to public.

7.8. Stakeholder Committee will be established by the Parties; members will be one representative from each entity having EARIP steering committee membership.

7.8.1. Stakeholder Committee Membership described to be generally consistent with EARIP Steering Committee specified in SB3.

7.8.2. Representatives on the Stakeholder Committee cannot be compelled. Voting specified; alternates allowed.

7.8.3. Role of Stakeholder Committee – to consult and advise on Routine, Nonroutine, and Strategic AMP Decisions and other matters; to make appointments of members to the Science Committee.

7.8.4. Meetings of Stakeholder Committee.

7.8.5. Voting.

7.8.6. Procedures.

7.9. Science Committee to be appointed; odd number, not less than 7 nor more than 15 members, with specified expertise.

7.9.1. Membership on the Science Committee selected by Implementing and Stakeholder Committees; from 7 to 11 members.

7.9.2. Role of Science Committee is to consult and advise Program Manager, Implementing Committee, and Stakeholder Committee; expected to provide independent and unbiased advice.

7.9.3. Operations of Science Committee. Program Manager will post location; generally open to public; committee to have two subcommittees: biological scientists and hydro-geological scientists.

7.9.4. Requests for Science Committee Evaluations or Recommendations.

- a.** Requests may be from Program Manager, Implementing Committee, or Stakeholder Committee for different levels of AMP Decisions.
- b.** Program Manager will seek recommendation from entire Science Committee on any Nonroutine or Strategic AMP Decision.
- c.** The Program Manager will inform Science Committee of applied research and seek their comment; will also inform the Science Review Panel.

7.9.5. Procedures. Collaborative process designed to achieve consensus. Competing views to be summarized. Quorum is three-fourths of appointed members.

7.9.6. EAA Funding may be provided by contract with EAA.

7.10. Creation of the Science Review Panel. EAA will enter into a contract with the National Academies of the National Academy of Science to establish an independent Science Review Panel, select its members, and undertake role of overseeing the SRP activities. If necessary, the Implementing Committee may contract with one or more other appropriate science organizations for the purposes of establishing an SRP and overseeing SRP activities.

7.10.1. Membership on the SRP will be 5.

7.10.2. Meetings of the SRP will be quarterly.

7.10.3. Role of the SRP will be to serve as formal review body on issues related to AMP, including advice on, review of, and comment on modeling, studies, data collection and analysis performed pursuant to the HCP. The SRP will provide formal resolution of major scientific issues involved in the HCP and AMP and will, if requested, definitively determine if the Scientific Record establishes each of the conclusions required in Subsec. 7.13.7.

7.11. Procedures for Routine AMP Decisions detailed.

7.10.1. If decision does not involve an adjustment to the HCP Budget in excess of \$25,000 and does not involve an individual Permittee, decision will be made by the Program Manager. If a Permittee is involved; decision will be made by a majority vote of the Implementing Committee. Voting may be by electronic method.

7.12. Procedures for Nonroutine AMP Decisions detailed.

7.12.1. Draft proposal of the decision may be brought forward by Program Manager, any Permittee, the Implementing Committee, or any three members of the Stakeholders Committee.

7.12.2. Draft will be forwarded to Program Manager and then to Implementing Committee and Stakeholder Committee. Program Manager will convene a meeting of the Science Committee.

7.12.3. Within 14 days, the Program Manager will convene a meeting of the Stakeholder Committee; and an additional 14 days may be requested, if needed, for evaluation and recommendation.

7.12.4. Stakeholder Committee will seek consensus.

7.12.5. Stakeholder Committee has 60 days to submit its recommendation to Program Manager.

7.12.6. Program Manager will call meeting of Implementing Committee within 14 days to review the report and consider approving or declining the recommendation.

- a.** If report recommends change is Long Term Biological Goals, Key Management Objectives or Flow-Related Objectives, the Implementing direct the Program Manager to discuss with Service.
- b.** Any substantial alteration of Long Term Biological Goals, Key Management Objectives or Flow-Related Objectives will be based only upon new science; Permit Amendment required.
- c.** If recommendation is for a change to a Conservation Measure, the affected Party will discuss with Service.
- d.** Nonroutine Decision that requires an adjustment to the Program Budget is subject to EAA disbursement policies.
- e.** No Party may be compelled to undertake a Conservation Measure not in the HCP.
- f.** No Phase I Measure may be discontinued except by vote of at least 3 voting members of the Implementing Committee.
- g.** A member of the Stakeholder Committee may protest any Permit Amdndment.

7.13. Scientific Record.

7.13.1. Supplementation of Scientific Record will be directed by Implementing Committee will ensure that the Program Manager continues to supplement the Scientific Record in accordance with Section 6.3 of the HCP to include the best scientific and commercial data available as necessary to evaluate for each Covered Species, whether:.

- a.** the Key Management Objectives and Flow-Related Objectives are necessary and adequate to meet the Long-term Biological Goals; and
- b.** the Conservation Measures are necessary and adequate to meet the Key Management Objectives and Flow-Related Objectives .

7.13.2. Identification of Research and Modeling overseen by the Implementing Committee include Biological and Ecological Models and Studies; Edward Aquifer Groundwater Modeling Improvements;

7.13.3. Implementing Committee will ensure performance of **other studies**, research and experimentation determined to be necessary during the AMP.

7.13.4. Deadline for Research and Modeling is December 31, 2017.

7.13.5. Science Committee Review. By January 15, 2018, the results of the research and modeling, along with data compiled by the Program Manager, will be submitted for third-party peer review by the National Academy of Sciences or equivalent scientific organization. The peer review will be completed no later than May 1, 2018.

7.13.6. Science Review Panel Research Review.

7.13.7. Action on Scientific Conclusions specified.

a. If, for any Covered Species, SRP determines that the Scientific Record establishes that the full complement of the Key Management Objectives and Flow-Related Objectives is not necessary to meet the Biological Goals, then the Implementing Committee will propose changes in accordance with the Scientific Record utilizing the procedures for Nonroutine AMP decisions..

b. If the SRP determines that the Key Management Objectives and Flow-Related Objectives are not adequate, then the Implementing Committee will propose changes to the Key Management Objectives and Flow-Related Objectives utilizing the procedures for Nonroutine AMP decisions.

c. If the SRP determines that the scientific record establishes that any Phase I Conservation Measure is not needed, then the Implementing Committee will propose discontinuation utilizing the procedures for Nonroutine AMP decisions.

d. If the SRP determines the Conservation Measures are achieving the Key Management Objectives and Flow-Related Objectives, neither the Presumptive Phase II or any other Phase II Conservation Measure will be pursued.

e. If the SRP determines that the Phase I Conservation Measures are not achieving the Key Management Objectives and Flow-Related Objectives, the Implementing Committee will consider changes and if does not recommend changes to the Phase I Conservation Measures, will direct the Program Manager to initiate Strategic AMP procedures.

f. If the SRP fails to make a recommendation, the Implementing Committee will coordinate with the Service and attempt to reach a conclusion on the necessity of a Phase II Conservation Measure.

7.14. Procedures for Strategic AMP Decisions. The process is similar to the process for Nonroutine AMP Decisions, provided that the recommendations relate to whether Phase II Conservation Measures, in addition to Phase I measures, are necessary and which such additional Conservation Measure should be undertaken.

7.14.1. Stakeholder Committee Meeting.

7.14.2. Draft Proposal.

7.14.3. Stakeholder Committee Review.

7.14.4. Stakeholder Committee Consensus.

7.14.5. Implementing Committee Review of Recommendations. If , in the Strategic AMP process, a Phase II Conservation Measure that is in addition to Phase I measures has been determined to be necessary, and the Implementing Committee fails to reach a resolution regarding whether an alternative Phase II Conservation Measure (other than the Presumptive Phase II Measure) should be pursued and take action to commence discussion on such alternative measure with the Service by **December 31, 2019**, then the Parties will undertake the Presumptive Phase II Conservation Measure and ensure that it is fully implemented by **December 31, 2020**.

Article Eight—General Provisions

8.1. Term. Effective Date is January 1, 2012; term of Agreement is 16 years, unless the Permit is extended and in that case, for the extended term of the Permit.

8.2. Remedies.

8.3. Default – Notice and Opportunity to Cure..

8.4. Payments from Current Revenue.

8.5. Rights Regarding Books and Records.

8.6. Mediation.

8.7. Interpretation.

8.8. Participation by the Parties.

8.9. Force Majeure.

8.10. Indemnification.

8.11. Modification.

8.12. Addresses and Notice.

8.13 State or Federal Laws, Rules or Regulations.

8.14. Severability.

8.15. Waiver,

8.16. Venue.

8.17. Succession and Assignment.

8.18. Entire Agreement.

8.19. Applicable Law.

8.19 [Sic]. Counterparts.

8.20. Officers and Agents.

8.21. Recitals.

8.22. Approval by Parties.

8.23. Condition Precedent.

8.24. Goods and Services.

8.25. No Third Party Beneficiary; No Partnership.

The FMA is executed on behalf of the Parties: EAA, City of New Braunfels, City of San Marcos, SAWS, and Texas State University – San Marcos.