

DRAFT MEMORANDUM OF UNDERSTANDING

FOR EDWARDS AQUIFER RESEARCH AND OTHER EFFORTS

RELATING TO ENDANGERED SPECIES HABITATS ALONG THE EDWARDS AQUIFER, TEXAS

Pursuant to the authorities set forth in Paragraph X.D of this Memorandum of Understanding for Relating to Endangered Species recovery in the Edwards Aquifer Basin, Texas ("MOU"), the signatories agree to participate in the development of certain activities relating to seven target species listed as threatened or endangered pursuant to the Endangered Species Act ("ESA"), 16 U.S.C. 1531 et seq., and their associated habitats.

I. PURPOSES

The purpose of this MOU is to develop a program that will implement certain aspects of the U.S. Fish and Wildlife Service's (FWS) recovery plans for the target species that relate to their associated habitats while allowing water development to continue in accordance with applicable state law. The program document may outline elements that include, but are not limited to the

- A. implementation of research, analysis and other measures that will benefit the target species and their associated habitats
- B. implementation of efforts to acquire, restore, and manage land or interests in land so as to provide and improve associated habitats for the target species,
- C. development and implementation of certain water management, conservation and supply measures,
- D. development of a basin-wide program ("Program") to be implemented in compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4331 et seq., and the ESA, the intent of which is to:
 - (1) secure defined benefits for the target species and their associated habitats to assist in their conservation and recovery through a basin-wide cooperative approach that can be agreed to by the participants and DOI;

(2) provide incidental take coverage through the implementation of a Habitat Conservation Plan (ESA, Section 10(a)(1)(b)) in the Edwards Aquifer Basin that, in the absence of such a Program, would be found by FWS to result in the unauthorized take of the target species ;

Comment [AMM1]: Retain ONLY if the group chooses to include the HCP in the RIP.

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- (3) help prevent the need to list more basin associated species pursuant to the ESA; and
- (4) mitigate new water-related activities in the basin.

E. establishment of a governance structure that will ensure appropriate state government and stakeholder involvement in the development of the program document, completion of NEPA compliance tasks, in the implementation of research and other projects beneficial to the target species and their associated habitats, and in the development of a Program.

II. RELATIONSHIP OF THE COOPERATIVE AGREEMENT AND ANY PROGRAM TO SB 1477 AND OTHER MATTERS

IV. RESEARCH AND RELATED ACTIVITIES

Research and analysis undertaken pursuant to this MOU will be designed to resolve issues or fill knowledge gaps concerning actions required to induce measurable improvements to the recovery of the target species and their associated habitats. The signatories agree to undertake during the term of this Cooperative Agreement specific research, analysis, peer review and related activities as set forth in Attachment I, "Milestones for the Cooperative Agreement."

V. HABITAT ACTIVITIES

The signatories to the MOU will determine an appropriate set of activities to acquire, restore, and manage aquatic resources to provide habitat for the target species. The intent of the signatories is to focus activities to create the greatest biological benefit to the target species.

VI. WATER CONSERVATION AND SUPPLY ACTIVITIES

Through the development of a program document, the signatories agree to identify water conservation and supply activities that will balance water use and development with the recovery of target species in the Edwards Aquifer Basin

VIII. ESA COMPLIANCE

If HCP is to be included, develop a general statement that the program is being developed to ensure compliance with Section 9 of the ESA through the development of an HCP. USFWS will assist in drafting.

Comment [AMM2]: If HCP is to be included, develop a general statement that the program is being developed to ensure compliance with Section 9 of the ESA through the development of an HCP. USFWS will assist in drafting.

IX. GOVERNANCE STRUCTURE

The signatories to the MOU will develop a governance structure for the program that will define the membership in the steering committee, responsibilities of the

steering committee, membership structure including, but not limited to the steering committee, voting procedures, cost-share, etc.

Comment [trp3]: Will need to begin working on these tasks at next full meeting.

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X. OTHER PROVISIONS

A. Geographic Scope This MOU applies only to water related activities occurring in the Edwards Aquifer Basin

Comment [AMM4]: The participants will need to further define.

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B. Term This MOU shall remain in effect for "X" years or until the signatories enter into an agreement implementing a Program following the NEPA and ESA processes, whichever comes earlier, or until terminated by the Steering Committee. . If NEPA or ESA review is prolonged, the MOU may be extended

C. Contributions of the Signatories The participants will determine a cost-sharing structure between federal and non-federal funding sources for the program.

D. Authorities and Responsibilities

1. Federal Cooperation with States Section 2(c)(2) of the ESA, 16 U.S.C. § 1531(c)(2), states that "the policy of Congress is that federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species." Under Section 6 of the ESA, the Secretary of the Interior is directed to cooperate to the maximum extent practicable with the states in carrying out the program authorized by the ESA and to consult with the affected states before acquiring any land and water, or interest therein, for the purpose conserving listed species. Under Section 6 of 41 U.S.C. 505, an executive agency should enter a cooperative agreement when anything of value will be transferred to a state or local government to carry out a public purpose authorized by federal statute.

2. Recovery Plans and Teams Under Section 4(f) of the ESA, 16 U.S.C. § 1533(f), the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may procure the services of public and private agencies and institutions in developing and implementing such recovery plans. Advice from such agencies and institutions is not subject to the Federal Advisory Committee Act, 5 U.S.C. app.2.

3. Applicable State Law The State of Texas administers water rights, including water rights for environmental flows. The state also has certain statutory authorities and responsibilities to protect and manage its fish and wildlife resources. All water rights necessary to carry out activities under the MOU and the Program developed under its terms will be applied for by a state agency or a project operator, and granted as

Comment [AMM5]: If HCP is included will need to include description of how RIP membership will comply with requirements laid out in SB

Comment [trp6]: Insert language appropriate to Texas water law and other relevant Texas statutes.

appropriate under the state's water law and in keeping with state authorities and responsibilities for fish and wildlife. Nothing in this MOU shall be construed as creating federal water rights or requiring the granting of water rights to federal entities.

If HCP is included will need to include description of how RIP membership will comply with requirements laid out in SB

Insert language appropriate to Texas water law and other relevant Texas statutes.

E. No Delegation or Abrogation Although this MOU sets forth a cooperative process, all signatories to this MOU recognize that they each have statutory responsibilities that cannot be delegated, and that this MOU does not and is not intended to abrogate any of their statutory responsibilities.

F. Consistency with Applicable Law This MOU is subject to and is intended to be consistent with all applicable federal and state laws and interstate compacts and decrees.

G. Legislative Approval Funding commitments made under this MOU are subject to approval and appropriations by the appropriate state and federal legislative bodies.

H. Officials not to Benefit No member of, or delegate to Congress, or resident Commissioner, shall receive any benefit that may arise from this MOU.

I. No Admissions by the Signatories. The signatories entering into this MOU on a voluntary and cooperative basis in an effort to resolve ESA species conflicts through a negotiated and mutually agreed upon basin-wide MOU and Program. Nothing herein shall constitute an admission that any water related activities or new water related activities have caused or will cause adverse effects to the target species or their habitats.