

MEMORANDUM OF AGREEMENT FOR EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM

This Memorandum of Agreement (“MOA”) is made and agreed to by the parties signing below (“Parties”) and is intended to serve as the memorandum of agreement for the Edwards Aquifer Recovery Implementation Program (“RIP”, or the “Program”) and as the memorandum of agreement required by Senate Bill 3. The Parties agree to work together in good faith and to cooperate to achieve the purposes and goals provided in the following provisions of this MOA.

Article 1. Purposes

Section 1.1. The purpose of this memorandum of agreement is to formally initiate the development and implementation of the Edwards Aquifer Recovery Implementation Program. The Program is a collaborative initiative among stakeholders to participate in efforts to contribute to the recovery of the Edwards Species, develop aquifer management measures, and develop conservation measures for the Edwards Aquifer. In undertaking the development and implementation of the Program, the Parties seek to avail themselves of funding to the extent available from all state, federal, and other sources to assist with the development and implementation of the Program.

Section 1.2. During the 80th Regular Session, the Texas Legislature passed Senate Bill 3, establishing, among other things, minimum procedural standards applicable to the Program. It is the intent of this MOA to comply with those minimum standards and to build upon them to ensure that the Program is as effective and as inclusive as is reasonably possible.

Section 1.3. The Program, including any habitat conservation plan, may also be expanded by decision of the Steering Committee, to include additional species that are candidates for listing as threatened or endangered and that otherwise meet the definition of Edwards Species. The Parties acknowledge that Program efforts will be mindful of minimizing impacts on other species when advancing Program initiatives. The Parties also acknowledge the necessity of finding ways to balance the Program’s contribution to recovery of Edwards Species with human water needs in an effort to allow for sustainable use of Edwards Aquifer water in accordance with applicable federal, state, and local law.

Article 2. Goals

Section 2.1. The Parties to this MOA agree to participate in good faith in a cooperative, consensus-based process consistent with the purposes of the Program, and the requirements and deadlines imposed by Senate Bill 3. The Parties also agree that reasonable flexibility to adapt Program activities, particularly in response to new information and changed circumstances, is necessary to effectively meet the purposes of the RIP. In addition to these Program goals, the Parties agree that the Program will include, but is not limited to the following goals:

- (a) development and implementation of sound scientific research, analysis and other measures which contribute to understanding and meeting the needs of the Edwards Species for sustainability;

- (b) development and implementation of strategies which balance the needs of the Edwards Species with preservation of permitted Edwards Aquifer water withdrawals;
- (c) review, development and implementation of aquifer management measures and conservation measures;
- (d) development and implementation of a program document that may be in the form of a habitat conservation plan for the Edwards Species in accordance with Section 10 of the Endangered Species Act.

Article 3. Definitions and Construction

Section 3.1. Definitions. In this MOA, the following terms shall have the meanings assigned in this section unless the context clearly specifies a different meaning:

“Edwards Aquifer” means the same as the definition for “Aquifer” used in The Edwards Aquifer Authority Act.

“Edwards Species” means aquatic species that (1) are listed as threatened or endangered pursuant to the Endangered Species Act, and (2) are found in the Edwards Aquifer or found in or around the springs associated with the Edwards Aquifer. The Edwards Species are as follows: Fountain darter, San Marcos gambusia, San Marcos salamander, Texas blind salamander, Comal Springs riffle beetle, Comal Springs dryopid beetle, Peck’s Cave amphipod, and Texas wild-rice.

“Senate Bill 3” means Article 12 of Senate Bill 3, 80th Reg. Sess. of Tex. Leg., and Article 2 of House Bill 3, 80th Reg. Sess. of Tex. Leg.

“Recovery” means the process by which the decline of an endangered or threatened species is arrested or reversed, and threats removed or reduced so that the species’ long term survival in the wild can be ensured.

“Endangered Species Act” means the federal Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531, et seq.

“Habitat conservation plan” means a conservation plan as referred to in Section 10 (a)(2), 16 U.S.C. § 1539 (a)(2), of the Endangered Species Act.

Section 3.2. Construction. The Parties intend that this MOA will be construed to comply with Senate Bill 3. During the 80th Regular Session, the Texas Legislature passed two identical provisions (Article 12 of Senate Bill 3, 80th Reg. Sess. of Tex. Leg., and Article 2 of House Bill 3, 80th Reg. Sess. of Tex. Leg.), establishing, among other things, minimum procedural standards applicable to the Program.

Article 4. Participation

Section 4.1. The Parties pledge to participate in good faith in an open, voluntary, and cooperative process that will strive to reach consensus on issues that further the purposes and goals of the Program. To achieve these purposes and goals, the Program will be overseen by a

Steering Committee designed to ensure opportunities for participation and adequate representation of stakeholders. The Steering Committee will develop procedures consistent with the MOA to ensure the Program includes, but is not limited to, the following procedural elements: an open process, advance notice of meetings and proposed actions, opportunity for stakeholder participation, open communication, and consensus-based decision-making.

Section 4.2. Senate Bill 3 established the composition of an initial Steering Committee. Senate Bill 3 also allows, upon execution of this MOA, the initial Steering Committee to vote to add Members and to change the composition of the Steering Committee. In order to ensure adequate representation on the Steering Committee, the signatories of this MOA hereby confirm their intent to support, at the earliest opportunity, the following additions to the Steering Committee:

- (a) A representative of a holder of an initial regular permit issued to a municipality located east of San Antonio,
- (b) A representative of Edwards Aquifer region municipal ratepayers/general public,
- (c) A representative of Guadalupe River Basin municipal ratepayers/general public,
- (d) A representative of a conservation organization, and
- (e) A representative of the Nueces River Authority.

The Steering Committee will develop a process to fill these additional appointments, at the earliest opportunity.

Section 4.2.1. The Steering Committee will develop a process for the designation of primary and alternative representatives to the Steering Committee. When changing or adding members, including members in addition to those listed in Section 4.2, the Steering Committee shall seek to maintain the balance of interests represented in the initial Steering Committee.

Article 5. Governance

Section 5.1. In addition to the responsibilities expressed in Senate Bill 3, the Steering Committee will develop procedures to: hire a Program Leader and determine the Program Leader's role in the Program; establish appropriate Program subcommittee processes, to include membership, responsibilities, and decision-making recommendations; and provide financing for Program activities.

Section 5.2. The goal of the Steering Committee is to achieve consensus-based decision-making. Consensus is reached when no Member of the Steering Committee is opposed to a proposal. It is understood and accepted that in order to achieve a consensus on the Steering Committee, each Member will have to be open to pursuing "win-win" alternatives and to considering variations on the proposal that he or she might initially prefer. In its deliberations, the Steering Committee shall seek to exhaust every reasonable and practicable effort to reach consensus.

Section 5.2.1. In furtherance of consensus-based decision-making, when a proposal to the Steering Committee involving a Tier 1 decision does not achieve consensus, the Steering Committee will develop a process which requires further deliberation and development of the

proposal by a smaller team of stakeholders as appointed by the Steering Committee. This smaller team will include, to the extent practicable, participants representing all different viewpoints on the proposal and provide an opportunity for input from other stakeholders. The goal of this smaller team is to achieve consensus on the proposal, or to develop a restatement of the proposal which may better achieve consensus. If after resubmission to the Steering Committee, or restatement of the proposal and resubmission to the Steering Committee, consensus has not been achieved, the Steering Committee will then vote on the proposal. A resubmitted or restated proposal will be deemed to have been approved by the Steering Committee when at least **range of 67% to 79% discussed, but no agreement reached** percent of the Steering Committee has voted in favor of the proposal in accordance with voting procedures to be developed by the Steering Committee.

Section 5.2.2. The Steering Committee will develop procedures for appointment of smaller teams, time requirements for resubmission and restatement of proposals, flexibility to continue to pursue consensus, and voting procedures. These procedures to be developed by the Steering Committee will apply to all Tier 1 decisions.

Section 5.2.3. The following types of decisions are considered to be Tier 1 decisions:

- (a) Hiring or firing of Program Leader,
- (b) Approval of annual budget,
- (c) Formal Recommendations to the EAA,
- (d) Recommendations or Reports to the Legislature,
- (e) Membership and Responsibilities of Subcommittees,
- (f) Changes to the membership of the Steering Committee,
- (g) Changes to the decision process of Steering Committee,
- (h) Adoption or amendment of any Program agreements including, but not limited to the Memorandum of Agreement, the Implementing Agreement, the Cooperative Agreement, and the Program Document, and
- (i) Any significant action determined by the Steering Committee to require Tier 1 decision-making in accordance with procedures to be developed.

Section 5.2.4. The Steering Committee will develop simplified procedures for all other decisions of the Steering Committee. For those decisions other than Tier 1 decisions, a decision will be deemed to have been approved by the Steering Committee when at least 67 percent of the Steering Committee, has voted in favor of the proposal in accordance with voting procedures to be developed by the Steering Committee. Non-Tier 1 decisions are not subject to the small team process described in Section 5.2.1.

Article 6. General Provisions

Section 6.1. This MOA shall remain in effect until the earlier of September 1, 2012 or the execution of a program document in compliance with the requirements of Senate Bill 3. However, any signatory retains the ability to withdraw from the Program at any time by providing written notice of withdrawal to the Steering Committee. This MOA, including the term

of the MOA, may be amended by action of the Parties in accordance with the decision procedures established by the Steering Committee.

Section 6.2. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the signatories to this MOA where creating such an obligation would be inconsistent with applicable federal, state, or local laws. Funding commitments made under this MOA by the signatories are understood to be contingent on obtaining approval and appropriations by the applicable local, state, or federal regulatory or legislative bodies. This MOA is subject to and is intended to be consistent with all applicable federal, state, and local laws.

Section 6.3. All signatories to this MOA recognize that various parties have statutory responsibilities that cannot be delegated. Nothing in this MOA shall be construed to abrogate any of the statutory responsibilities of any signatory of the MOA. This MOA is effective on the date fully signed by the Parties as required by Senate Bill 3 and by a representative of the United States Fish and Wildlife Service. **[Open question about whether broader participation should be required for MOA to be effective.]** The MOA will be open for signatures of additional stakeholders following the effective date of the MOA.