

## **MEMORANDUM OF AGREEMENT FOR EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM**

This Memorandum of Agreement (“MOA”) is intended to serve as the Memorandum of Agreement for the Edwards Aquifer Recovery Implementation Program (the “Program”) under the Endangered Species Act and as the Memorandum of Agreement required by Senate Bill 3. It is made and agreed to by the Parties signing below and is effective on the Effective Date. The Parties will work together in good faith and cooperation to achieve the purposes and goals provided in the following provisions of this MOA.

### **Article 1. Purposes**

**Section 1.1.** The purpose of this MOA 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.

**Section 1.2.** During the 80<sup>th</sup> Regular Session, the Texas Legislature enacted Senate Bill 3, establishing, among other things, minimum requirements applicable to the Program. It is the intent of the Parties to comply with those minimum requirements and to build upon them to ensure that the Program is as effective and as inclusive as is reasonably possible, while also maintaining compliance with applicable provisions of the Endangered Species Act.

**Section 1.3.** The Parties acknowledge that Program efforts will be mindful of minimizing impacts on other protected 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, while maintaining compliance with applicable provisions of the Endangered Species Act.

### **Article 2. Goals**

**Section 2.1.** The goals of the Program, which are intended to be broadly interpreted, include, but are not limited to, the following:

- (a) review, develop, and implement sound scientific research, analysis and other measures which contribute to understanding and meeting the needs of the Edwards Species;
- (b) review, develop, and implement strategies which balance the needs of the Edwards Species with overall water use and supply in the Edwards Aquifer region;
- (c) develop and complete an implementing agreement by December 31, 2009;
- (d) develop and complete a program document by September 1, 2012, that shall take effect December 31, 2012, and may be in the form of a habitat conservation plan for the Edwards Species;
- (e) implement the program document; and

(f) secure federal, state, and other available funding to assist with the development and implementation of the Program.

**Section 2.2.** The Parties to this MOA will 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 acknowledge 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 Program.

### **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, as of the Effective Date, 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. This definition may be expanded by decision of the Steering Committee, without amending the MOA, to include additional species that are proposed for listing as threatened or endangered and that otherwise meet the definition of Edwards Species.

“Effective Date” means the date this MOA is effective, which shall be that date on which the MOA has been executed by duly authorized representatives of (1) the Edwards Aquifer Authority, United States Fish and Wildlife Service, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas Department of Agriculture, Texas Water Development Board and (2) of other interests designated in Senate Bill 3 as initial members of the Steering Committee such that, collectively, at least 75% of the initial members of the Steering Committee have signed the document.

“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.

“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.

“Senate Bill 3” means Article 12 of Senate Bill 3, 80<sup>th</sup> Regular Session, 2007, of the Texas Legislature and Article 2 of House Bill 3, 80<sup>th</sup> Regular Session, 2007, of the Texas Legislature.

The Articles amend the Edwards Aquifer Authority Act (“Act”), Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, Section 1.26(A) of the Act provides for the development of a recovery implementation program. Identical provisions are included in Article 2 of House Bill 3, 80<sup>th</sup> Regular Session of the Texas Legislature.

**Section 3.2. Construction.** The Parties intend this MOA to be construed to comply with Senate Bill 3 establishing, among other things, minimum requirements applicable to the Program and with applicable requirements of the Endangered Species Act.

#### **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 adopt procedures consistent with the MOA to ensure the Program includes, but is not limited to, the following procedural elements: an open process, advance public 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 stakeholder representation on the Steering Committee, the signatories of this MOA recommend that the Steering Committee, at its earliest opportunity, add to the Steering Committee five other persons in the following categories:

- (a) A representative of a holder of an Edwards Aquifer Authority initial regular permit issued to a small municipality (population under 50,000) 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.

**Section 4.3.** The Steering Committee will adopt procedures for the designation of primary, alternate, and replacement members of 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 as set out in Senate Bill 3.

**Section 4.4.** In accordance with Senate Bill 3, the Steering Committee shall appoint an Edwards Aquifer area expert science subcommittee no later than December 31, 2007. As soon as reasonably possible, the Steering Committee shall establish a recharge facility feasibility subcommittee; other subcommittees shall be established as the Steering Committee determines appropriate. The Steering Committee shall ensure procedural elements are adopted to ensure an open process, advance public notice of meetings and proposed actions, opportunity for

stakeholder participation, open communication, and consensus-based decision-making are followed in subcommittees.

## **Article 5. Governance**

**Section 5.1.** In addition to the responsibilities expressed in Senate Bill 3, the Steering Committee will adopt procedures to: address employment of a Program Manager and determine the Program Manager's role in the Program; establish appropriate Program subcommittee processes, to include membership, responsibilities, and decision-making recommendations; obtain funding for the Program ; adopt or amend Program Operational Rules; and other matters for which the Steering Committee determines procedures are necessary.

**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 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 5.3.** In furtherance of consensus-based decision-making, when a proposal to the Steering Committee involving a Tier 1 decision (as set out in Section 5.5) does not achieve consensus, the Steering Committee will adopt a process which requires further deliberation and development of the proposal by an Issue Team. The Issue Team will be a smaller team of stakeholders as appointed by the Steering Committee and will include, to the extent practicable, participants representing all different viewpoints on the proposal, which may include participants who are not members of the Steering Committee. The Issue Team process will provide an opportunity for input from other stakeholders. The goal of the Issue Team is to achieve consensus on the proposal, or to develop a restatement of the proposal that may better achieve consensus of the Steering Committee. 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 75 percent of the entire Steering Committee has voted in favor of the proposal in accordance with voting procedures to be adopted by the Steering Committee.

**Section 5.4.** The Steering Committee will adopt procedures for appointment of Issue Teams, time requirements for resubmission and restatement of proposals, flexibility to continue to pursue consensus, an allowance for a minority report to be included with Tier 1 decisions, and voting procedures. These procedures to be adopted by the Steering Committee will apply to all Tier 1 decisions.

**Section 5.5.** The following types of decisions are considered to be Tier 1 decisions:

- (a) Hiring or terminating of Program Manager;
- (b) Approval of annual budget;
- (c) Formal Recommendations to the EAA;

- (d) Recommendations or Reports to the Legislature;
- (e) Membership, responsibilities, and procedures of subcommittees;
- (f) Changes to the membership of the Steering Committee beyond initial changes set out in Section 4.2 above;
- (g) Adoption and amendment of the decision process of the Steering Committee;
- (h) Decisions related to 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;
- (i) Adoption or amendment of Program Operational Rules; and
- (j) Any significant action determined by the Steering Committee to require Tier 1 decision-making in accordance with procedures to be developed.

**Section 5.6.** The Steering Committee will adopt 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 a majority of the entire Steering Committee has voted in favor of the proposal in accordance with voting procedures adopted by the Steering Committee. Non-Tier 1 decisions are not subject to the Issue Team process described in Section 5.3.

## **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 and the Endangered Species Act. 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 Senate Bill 3 and the decision processes 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 does not create an exclusive arrangement between the United States Fish and Wildlife Service (Service) or the Department of the Interior and the Parties to this agreement or commit the Service or the Department of the Interior to enter into any contract or other binding obligation. By entering into this MOA, no Party is obligated to enter into any contract or other binding obligation. 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, including:

- (1) responsibilities that relate to implementing specific strategies included in the Program Document;

(2) authority to decide whether to approve any document, or amendment thereto, specifically required to be entered into by the parties under Senate Bill 3; or

(3) the Service's statutory authority under the Endangered Species Act.

**Section 6.4.** This MOA is effective on the date fully signed as described in the Definition of Effective Date. The MOA may be signed by additional stakeholders, including other appropriate federal agencies, following the Effective Date of the MOA.