

**BEFORE THE
EDWARDS AQUIFER AUTHORITY
State of Texas**

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JUN 14 2005
EDWARDS AQUIFER AUTHORITY
DOCKET CLERK

IN THE MATTER OF THE FOLLOWING APPLICATION)
TO GRANT VARIANCE FROM COMPREHENSIVE)
WATER MANAGEMENT RULES:)

HA00205, HA00206 Texas State University)
and HA00207)

**FINAL ORDER GRANTING APPLICATION
FOR VARIANCE FROM COMPREHENSIVE WATER MANAGEMENT RULES**

ON THIS DAY CAME ON TO BE HEARD the above-styled and numbered Application for Variance from Comprehensive Water Management Rules (“Variance Application” or “Application”) of Texas State University (“Applicant”). As set forth below, the General Manager of the Edwards Aquifer Authority (“Authority”) issued notice of his proposed action on the Variance Application. The Board of Directors (“Board”) of the Authority, after having reviewed and considered the summaries of the evidence for the Variance Application as contained in the materials in the Board Packet, the arguments and presentation of the General Manager of the Authority, and the arguments and presentations of the Applicant, or its representatives, and other applicants for a groundwater withdrawal permit or permittees, or their representatives, who may have appeared before the Board, is of the opinion and finds that:

1. the facts necessary to support the General Manager’s proposed action to grant the Variance Application have been established by convincing evidence; and
2. the General Manager’s proposed action is entitled to prevail with reference to the above-styled and numbered application.

Accordingly, the Board is of the opinion and finds that the Variance Application should be GRANTED. In support of this Final Order, the Board makes its Findings of Fact and Conclusions of Law as follows:

I. FINDINGS OF FACT

1. On July 9, 2002, February 11, 2003, and December 11, 2001, the Authority granted Texas State University three Initial Regular Permits (“IRPs”) for industrial use: IRP Nos. HA00205, HA00206 and HA00207.

2. On June 30, 2004 the Applicant submitted a groundwater conservation plan to the Authority, which was approved by the Authority.

3. On June 30, 2004, the Applicant filed the Variance Application with the Authority at the Authority’s official business offices located at 1615 North St. Mary’s, San Antonio, Texas.

4. The Variance Application seeks issuance of an order granting a variance from the requirement of Section 715.110(j) of the Authority’s Comprehensive Water Management Rules that Applicant perform measurement of its landscape area and total irrigable area to implement the Authority’s Groundwater Conservation Plan’s Best Management Practice for industrial users No. 4 (Large Landscape Conservation Programs) (“BMP Ind-4”).

5. BMP Ind-4 requires industrial users to conduct a large landscape water-use survey. Section A of BMP Ind-4 specifies that “the water-use survey must at a minimum include: measurement of the landscape area; measurement of the total irrigable area; irrigation system checks and distribution uniformity analysis; and review or development of irrigation schedules.”

6. Applicant seeks a variance from the requirement of BMP Ind-4 to perform measurement of landscape area and total irrigable area because Applicant states that the

measurement data from “as built” maps are not available and measuring each section would be extremely time consuming to perform for the university’s 427 acres campus, consisting of 700 irrigated sections.

7. Applicant seeks to utilize the landscape irrigation audit process as an alternative to measurement of its landscape area and total irrigable area. The landscape audit process involves collecting field data, including “catch can” measurements to determine precipitation rate, soil depth, soil texture and turf type on individual irrigated sections and entering this data into irrigation software that can calculate Distribution Uniformity (“DU”), and developing an irrigation schedule based on ETo for each section audited. Applicant has proposed to:

7.1 Complete a landscape survey to determine ETo-based water-use budget within one year by completing at least one audit of all turf irrigation sections on campus and implementing the resulting schedules;

7.2 Repeat the audits as time allows to collect comparative data to confirm that the methods used remain reliable;

7.3 Repeat the audits if the DU falls below 70%; and

7.4 Further investigate the system’s design and installation to assess whether additional repairs or a complete renovation is needed if the DU remains below 70%.

8. After receipt of the Variance Application, the General Manager of the Authority conducted an initial review of the Application for administrative completeness.

9. By letter dated June 8, 2005, the General Manager notified the Applicant that he had determined that the Application was administratively complete.

10. After determining that the Variance Application was administratively complete, the General Manager conducted a technical review of the Application for the purpose of

determining if the Application should be granted or denied, in whole or in part.

11. After completing the technical review of the Variance Application, the General Manager concluded that he should recommend to the Board that the Application be granted and proposed that the Board issue an order granting the Application.

12. In conjunction with the proposed action, the General Manager prepared a Technical Summary.

13. On June 8, 2005, the General Manager provided written notice to the Applicant that technical review of the Variance Application was complete, and provided the Applicant with notice of the proposed action and Technical Summary in support thereof.

14. The Docket Clerk of the Authority scheduled before the Board a presentation by the General Manager on the Variance Application and his proposed action. The presentation occurred at the regular meeting of the Board on June 14, 2005, at the Conference Center of the Edwards Aquifer Authority, 1615 N. St. Mary's, San Antonio, Texas.

15. The Notice of Meeting ("NOM") of the regular meeting of the Board, at which the General Manager's presentation of the Variance Application and its proposed granting thereof was made, was posted on the Authority's outside bulletin board under a glass case.

16. The Authority provided the NOM to the Secretary of State.

17. The Authority provided the NOM to the county clerk of Bexar County, being the county in which the administrative office of the Authority is located.

18. The Authority provided written notice to the Applicant that its Variance

Application was scheduled for consideration at the regular meeting of the Board on June 14, 2005, at the Conference Center of the Edwards Aquifer Authority, 1615 N. St. Mary's, San Antonio, Texas.

19. The Variance Request was, contemporaneous with its receipt, affixed with a "date stamp" by the Authority to the front page of the Application indicating its date of receipt by the Authority.

20. The Applicant is not delinquent in the payment of any fee due and owing to the Authority, including but not limited to aquifer management fees.

21. The Applicant has filed with the Authority all applicable reports.

22. Granting the Variance request will accomplish the objective sought to be advanced by Section 715.110(j) of the Authority's rules of accounting for and reducing outdoor water usage for large landscapes.

23. Granting the Variance request will not cause significant harm to any other person or group of persons.

II. CONCLUSIONS OF LAW

1. Because the Variance request seeks a variance from a requirement of the Edwards Aquifer Authority's Comprehensive Water Management Rules, the Board of Directors of the Authority has jurisdiction over the Application.

2. The Variance request complies with the Act and the Authority's Rules.

3. The Variance request should be granted in accordance with this Final Order.

III. ORDERING PROVISION

IT IS THEREFORE ADJUDGED, ORDERED, AND DECREED that the above-styled and numbered Variance request is hereby **GRANTED** as follows:

1. Applicant is excepted from complying with the requirement of EDWARDS AQUIFER AUTHORITY RULES § 715.110(j) to implement BMP Ind-4 requiring Applicant to perform measurement of its landscape area and total irrigable area;

2. as an alternative to complying with EDWARDS AQUIFER AUTHORITY RULES § 715.110(j), Applicant is instead required to:

2.1 Complete a landscape survey to determine ETo-based water-use budget within one year by completing at least one audit of all turf irrigation sections on campus and implementing the resulting schedules;

2.2 Repeat the audits as time allows to collect comparative data to confirm that the methods used remain reliable;

2.3 Repeat the audits if the DU falls below 70%; and

2.4 Further investigate the system's design and installation to assess whether additional repairs or a complete renovation is needed if the DU remains below 70%; and


3. this order may be rescinded by the Board at any time due to changed circumstances, new information, or failure of the Applicant to abide by the terms and conditions of this order, the Act, the Authority's rules, any permit issued by the Authority, or any order of the Board;

4. this order is effective beginning June 14, 2005 and continues until it is rescinded

by an order of the Board under § 715.16, EDWARDS AQUIFER AUTHORITY RULES; and

5. the General Manager is directed to take all appropriate steps to ensure Applicant's compliance with the terms of this order.

PASSED, APPROVED and ADOPTED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THIS 14 DAY OF JUNE, 2005 to be effective beginning on this same date.

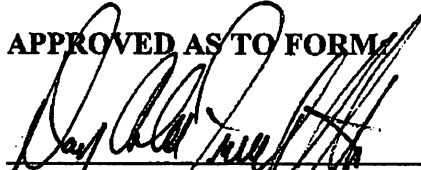


DOUGLAS R. MILLER
Chairman, Board of Directors
Edwards Aquifer Authority

ATTEST:



LEVI JACKSON
Secretary, Board of Directors
Edwards Aquifer Authority

APPROVED AS TO FORM:


DARCY ALAN FROWN FELTER
General Counsel
Edwards Aquifer Authority