

CONSERVATION EASEMENT

STATE OF TEXAS §
 §
COUNTY OF Medina §

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Conservation Easement") is made on this 27 day of Oct, 2003, by Harold H. Haby, with an address of 2145 CR 4516, Castroville, Texas 78009 ("Grantor"), and the City of San Antonio acting by and through the San Antonio Water System ("SAWS"), a wholly owned municipal utility, with an address of 1001 East Market Street, San Antonio Texas, 78205 ("Grantee").

RECITALS:

- A. The Grantor is the sole owner in fee simple of the property legally described in Exhibit A attached hereto and incorporated by this reference (the "Property"), which consists of approximately 38.006 acres located in Medina County, State of Texas and is generally known as the Haby Ranch.
- B. The Property is currently in an undisturbed natural condition and located over the Edwards Aquifer Recharge Zone. Preservation of the Property is necessary to maintain, enhance and protect the water quality and to promote recharge of the Edwards Aquifer.
- C. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Property in perpetuity, and the State of Texas has authorized the creation of Conservation Easements pursuant to Texas Natural Resources Code, Chapter 183, as amended and Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, hereby grants, bargains, sells and conveys unto the Grantee a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. Purposes. The purpose of this conservation easement is to ensure that the property will be retained forever in a substantially undisturbed natural condition to protect the natural resources, watershed, and recharge water quality; to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property described above, while allowing for traditional uses on the Property that are compatible with and not destructive to the conservation values of the Property, such as limited residential construction, selective timber harvest, ranching, and hunting

The Grantor will not perform, or knowingly allow others to perform, any act on or effecting the Property that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require

the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which the Grantor has no control.

The purposes of this Conservation Easement are as follows:

- 1.1 To protect the Property's natural resources, watershed, recharge water quality, and ecological integrity;
- 1.2 To allow for research, educational and monitoring activities of the Grantee;
- 1.3 To restrict the development and use of the Property consistent with the following:
 - 1.3.1 to prohibit the division, subdivision or further partitioning of the Property;
 - 1.3.2 to prohibit the conduct of any commercial, or industrial use or activity;
 - 1.3.3 to prohibit the construction of any buildings or improvements except as expressly allowed in Sections 2 and 3, or otherwise in furtherance of the purposes of this Conservation Easement;
 - 1.3.4 to prohibit surface uses related to the extraction of minerals or hydrocarbons or other materials on or below the surface, or the storage thereof;
 - 1.3.5 to prohibit any activity that diminishes the aquifer recharge capabilities of the Property;
 - 1.3.6 to prohibit the generation, storage, collection, transportation, disposal, dumping, or release of hazardous waste or materials, and to prohibit the disposal or dumping of non-hazardous waste or materials on the Property;
 - 1.3.7 to prohibit storage and dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, and prohibit any placement of underground storage tanks in, on, or under the Property;

With the exception of improvements permitted above, Grantor conveys to Grantee all developmental rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated or extinguished, and may not be used or transferred to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise.

2. ADDITIONAL RIGHTS RETAINED BY GRANTOR. Grantor retains the following additional rights:

- 2.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement. Prior to making any change in use of the Property, Grantor shall notify Grantee in writing to allow

Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

- 2.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.
- 2.3 Animal Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals which pose a material threat to livestock and/or humans by means and methods approved by Grantee. The Techniques employed shall be selective and specific rather than nonselective and overly broad.
- 2.4 Construction. Grantor shall have the right to construct one single-family residence and associated out buildings to be located within a designated building envelope mutually agreeable between the parties. Grantor may construct driveways, utilities, and water well to serve the residence.
- 2.5 Timber Harvest. Grantor shall have the right to selectively harvest juniper ash (cedar trees).
- 2.6 Agriculture Use. Grantor shall have the right to breed, raise, and pasture domestic livestock on the Property. Grantor may not establish a commercial feedlot on the Property, which is defined for the purposes of this easement as a confined area or facility within which land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market.

3. **GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement the following rights are granted to Grantee by this Conservation Easement:

- 3.1 Right to Enforce. The right, but not the obligation, to preserve and protect the conservation values of the Property and enforce the terms of this Conservation Easement.
- 3.2 Monitoring and Research. The right, but not the obligation, to monitor the hydrology of the Edwards Aquifer below the subject Property.
- 3.3 Ingress, Egress and Access. The Grantee and its officers, agents, invitees, employees and contractors will have a right of ingress, egress and access to the Property at all times, to inspect the Property for compliance purposes and exercise the rights and carry out the purposes set forth in this Conservation Easement.
- 3.4 Monitoring Equipment. The Grantee may install, operate, and maintain various types of monitoring equipment, including a continuous recording rain gauge, at locations that are mutually agreeable to the parties. The Grantee may install, operate, and maintain fences and other devices at locations mutually agreeable to the parties to provide security for the monitoring equipment.

3.5 Monitoring Wells. The Grantee may drill, operate, and maintain monitoring wells at locations that are mutually agreeable to the parties; provided, however, it is agreed that Grantee may maintain not less than six (6) such monitoring wells at any time and from time-to-time. The Grantee may install, operate, and maintain fences and other devices at locations mutually agreeable to the parties to provide security for the monitoring wells.

3.6 Research and Educational Activities. The Grantee may conduct research activities with appropriate research entities related to watershed management, water quality protection or other similar purposes consistent with the purposes of this Conservation Easement. The Grantee may also use the Property for educational purposes, including field trips related to natural science education. The Grantee shall coordinate all such activities with the Grantor.

3.7 Sensitive Hydrologic Features. The Grantee will have a right of review and approval for all plans of the Grantor involving excavation and maintenance activities associated with cave structures and other sensitive hydrogeologic features on the Property; provided such review and approval by Grantee shall not constitute a representation or warranty as to the accuracy, quality or safety of said plans.

3.8 Recharge Structure Construction. The Grantee may construct, operate, and maintain one or more recharge structures and other facilities reasonably associated therewith.

Upon completion by the Grantee of any activity under 3.4, 3.5, 3.6 or 3.8 of this Section 3, Grantee agrees to restore the Property to its condition preceding the activity, insofar as practicable. This includes the restoration of fences, and the abandonment and plugging of wells in accordance with applicable laws and regulations. The Grantee will be responsible for maintenance of any area fenced by it. Grantor and Grantee agree that any approval or consent required to this Section 3 shall not be unreasonably withheld, conditioned or delayed, except as expressly provided herein.

4. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect the following obligations of the Grantor as owners of the Property to:

4.1 be solely responsible for payment of all taxes and assessments levied against the Property.

4.2 be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property, except as provided in Section 3.

5. **ACCESS.** Except as expressly provided herein, no right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public

has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways.

6. **ENFORCEMENT.** The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. If the Grantee finds what is a violation, it may, at its discretion, take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the conservation values of the Property, the Grantee shall give the Grantor written notice of the violation and ten (10) days to correct it (or if the violation is not reasonably capable of correction within ten (10) days, then such longer period of time as may be reasonably necessary under the circumstances, so long as Grantor commences within said ten (10) day period to correct the violation, and thereafter uses good faith, continuous and diligent efforts to correct the violation), before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction or other order requiring the Grantee to restore the Property to its condition prior to the violation. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. The rights, privileges and benefits of Grantee in this Conservation Easement are joint and several to Grantee, and may be fully and independently performed by and for the benefit of SAWS, without the necessity of joinder of the other.

7. **TRANSFER OF CONSERVATION EASEMENT.** The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable. SAWS shall have the right to transfer or assign this Conservation Easement to any organization that at the time of transfer, qualifies as a "holder" under Section 183.001 of the Texas Natural Resources Code (as the same may be amended from time-to-time), and the organization expressly agrees to assume the responsibility imposed on SAWS, as the case may be, by this Conservation Easement. If SAWS ever ceases to exist or no longer qualifies as a holder under applicable state law, the rights and benefits of the other in this Conservation Easement shall continue and a court with jurisdiction may transfer the rights of such party in this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

8. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer and be subject to this Conservation Easement. In the event of a transfer by Grantor to more than one (1) third party, Grantor shall nominate a single party to whom all notices shall be sent and from whom all approvals and consents may be obtained.

9. **AMENDMENT OF CONSERVATION EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Chapter 183 of the Texas Natural Resources Code, as amended from time-to-time, or any regulations promulgated pursuant to that law.

10. **TERMINATION OF CONSERVATION EASEMENT.** This Conservation Easement may be terminated only upon the mutual written consent of the Grantor and the Grantee in an instrument recorded in the Real Property Records of Medina County, Texas.

If condemnation of a part of the Property or the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

At the time of conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested to the Grantee. If the easement is terminated and the Property is sold or taken for public use, then as required by Sec. 1.170A-14(g)(6) of the IRS regulations, Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus the amount attributable to any new improvements made after the date of conveyance, which amount shall be reserved by the Grantor) equal to the ratio of the appraised value of the easement to the fair market value of the Property.

11. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

12. **TITLE.** The Grantor covenants and represents that (i) it is the sole owner and has good and indefeasible title to the Property, (ii) it has the full right to grant and convey this Conservation Easement without the consent or joinder of any third parties, (iii) the Property is free and clear of any and all liens and encumbrances, including but not limited to, any deeds of trust or mortgages not subordinated to this Conservation Easement, and (iv) the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement, without hindrance or interference by or from any third party.

13. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:
Harold H. Haby
2145 CR 4516
Castroville, TX 78009

To the Grantee:
San Antonio Water System
1001 E. Market Street, Suite 204
San Antonio, Texas 78205
Attn: General Counsel

14. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

15. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

16. **RE-RECORDING.** In order to ensure the perpetual enforceability of this Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument from time-to-time.

17. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing shall be subject to and subordinate to this Conservation Easement.

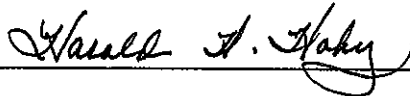
18. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of its authorized representative affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Real Property Records of Medina County, Texas.

TO HAVE AND TO HOLD, this Grant of Conservation Easement together with all rights, hereditaments and appurtenances belong thereto unto the Grantee, its successors and assigns, forever, and Grantor does hereby bind itself and its successors, to warrant and defend title to the Conservation Easement created herein unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

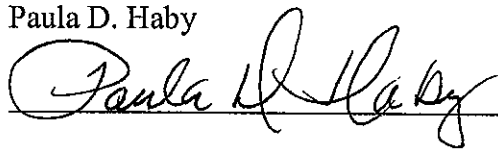
IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

GRANTOR:

Harold H. Haby



Paula D. Haby



GRANTEE:

THE SAN ANTONIO WATER SYSTEM

By: 

Name: Eugene E. Habiger, General, USAF
(Ret.)

Title: President/Chief Executive Officer

ACKNOWLEDGEMENTS

STATE OF TEXAS

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COUNTY OF Medina

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BEFORE ME, the undersigned Notary Public, on this day personally appeared **Harold H. Haby**, known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as **Grantor** for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27 day of Oct., 2003.

(seal)



Diane Schiffrs

Notary Public

STATE OF TEXAS

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COUNTY OF Medina

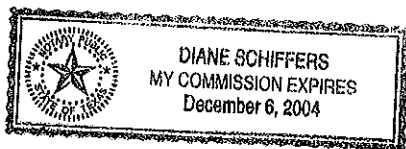
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BEFORE ME, the undersigned Notary Public, on this day personally appeared **Paula D. Haby**, known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as **Grantor** for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27 day of Oct., 2003.

(seal)



Diane Schiffrs

Notary Public

ACKNOWLEDGEMENTS

STATE OF TEXAS

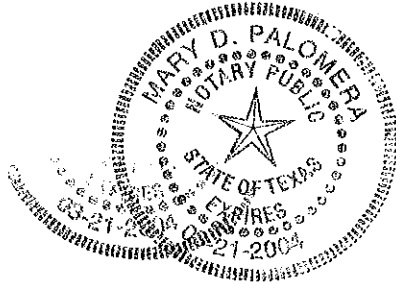
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COUNTY OF BEXAR

BEFORE ME, the undersigned Notary Public, on this day personally appeared **Eugene E. Habiger**, known to me to be the person whose name is subscribed to the foregoing instrument and that he has executed the same as **President/Chief Executive Officer of the San Antonio Water System**, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 28th day of Oct., 2003.

(seal)



Mary D. Palomera
Notary Public