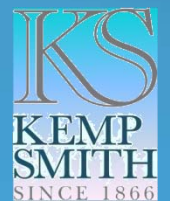


EAHCP Table 7.1



Implementing Committee
Edwards Aquifer HCP Program
June 19, 2014

presented by
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Purpose

- ◆ Refresher on Table 7.1 and its use
- ◆ Identify key legal principles

Approach

- ◆ What is Table 7.1?
- ◆ Why is Table 7.1 needed?
- ◆ What are the Table 7.1 source documents?
- ◆ What are the legal parameters regarding the use of Table 7.1?

EAHCP Table 7.1

- ◆ **Table 7.1** = “the estimated annual cost of implementing the minimization and mitigation measures in Chapter 5 and conducting the AMP in each year of the HCP” (EAHCP p. 7-1)
- ◆ **Cost categories**
 - ◆ Conservation Measures (EAHCP ch. 5)
 - ◆ Springflow protection measures
 - ◆ Habitat restoration/protection measures
 - ◆ Modelling and research (AMP) (EAHCP ch. 6)
 - ◆ Refugia (EAHCP § 5.1.1)
 - ◆ Program management (EAHCP § 9.1)

EAHCP Table 7.1 cont...

- ◆ **Cost characteristics** (EAHCP pp. 7-1, 7-6)
 - ◆ Annual recurring costs, e.g. habitat-related O&M, and program administration
 - ◆ Non-recurring costs, e.g. front-loaded habitat-related construction
 - ◆ Average annual costs (“annualized”) = based on triggering probability analysis (ASR/VISPO)
- ◆ **Cost presentation**
 - ◆ Line item: *e.g.* RWCP = \$986,500 (2014)
 - ◆ Year: *e.g.* 2014 = \$19,331,097
 - ◆ Phase: Ph. I (2013-19) = \$130,445,929; Ph. II (2020-27) = \$131,462,026
 - ◆ Subtotals: *e.g.* RWCP = \$11,344,750 (Ph. I 2013-19)
 - ◆ Total = \$ 261,907,955 (2013-2027)

The Need for Table 7.1

- ◆ ITP issuance criteria
- ◆ Applicant must “ensure” that “adequate funding” for the HCP will be provided (16 USC § 1539(a)(2)(B)(iii); 50 CFR § 17.22(b)(2)(i)(C), 17.32(b)(2)(i)(C); HCP Handbook p. 7-4; EAHCP p. 7-1)
- ◆ Adequate funding + assurances
- ◆ The “adequacy” of funding is provided in Table 7.1
- ◆ The “assurance” of funding is in the IA, EAHCP, and FMA

Table 7.1 Source Documents

- ♦ ITP ¶ E – permittees’ duty to comply with the EAHCP
- ♦ IA ¶ 10 – permittees’ agreement to fund the EAHCP
- ♦ EAHCP ch. 7 – source for Table 7.1, and associated funding assurances
- ♦ FMA §§ 1.1.40, 3.2, 5.1, 5.2.1 – permittees’ agreement regarding EAHCP funding details
- ♦ IC Operational Procedures (silent)

Table 7.1 Legal Principles

- ◆ “Adequate” Funding
- ◆ “Full” Funding
- ◆ Annual Funding Obligation
- ◆ Annual Program Budget
- ◆ Annual Party Work Plan and Cost Estimate Process
- ◆ Adjustments to the EAA Annual Funding Obligation
- ◆ Notes on Ph. II Costs and Table 7.1

Table 7.1 Legal Principles

- ◆ **“Adequate” Funding** (EAHCP p. 7-1; FMA §§ 3.2, 5.2.1)
 - ◆ Table 7.1 2013 amount = the amount of EAHCP funding deemed “adequate”

Table 7.1 Legal Principles cont...

- ◆ **“Full” Funding** (EAHCP pp. 7-1, 7-5, 7-6; FMA §§ 3.2, 5.2.1, 5.2.2)
 - ◆ EAA required to “fully” fund EAHCP implementation
 - ◆ “Adequate” funding = “full” funding
 - ◆ Applies to EAHCP as initially approved by FSW, and as may be changed through AMP
 - ◆ **2% Funding “Ceiling”:** EAA not required to fund EAHCP implementation costs in excess of Table 7.1, adjusted for a 2% increase, compounded annually, for the years elapsed since 2013
 - ◆ applies to yearly totals
 - ◆ does not apply to line-items

Table 7.1 Legal Principles cont...

- ◆ **Annual Funding Obligation (“AFO”)** (EAHCP pp. 7-1, 7-5; FMA §§ 1.1.4; 1.1.41, 3.2, 5.1, 5.2.1, 5.2.2)
 - ◆ Level of EAA funding required to fund the “Annual Program Budget”
 - ◆ Funding sources are EAA PAMFs and third-party contributions
 - ◆ AFO satisfies the “adequate” funding amount
 - ◆ AFO satisfies the “full” funding requirement
 - ◆ 2013 AFO = Table 7.1 2013 amount (\$20,416,847)
 - ◆ 2014 AFO and thereafter = Table 7.1 adjusted by 2% escalator, or Annual Program Budget, whichever is less
 - ◆ EAA has discretion to fund in excess of “adequate” funding, subject to the reserve account limitations (\$46M)
 - ◆ EAA may not fund less than the “adequate” funding criteria

Table 7.1 Legal Principles cont...

- ◆ **Annual Program Budget (“APB”)** (EAHCP p. 7-5; FMA §§ 1.1.5; 4.5, 4.6; 4.7, 5.2.1, 5.2.2, 6.2.3)
 - ◆ EAA budget adopted each year during the ITP term to fund EAHCP implementation
 - ◆ 2013 APB = Table 7.1 2013 amount (\$20,416,847)
 - ◆ 2014 APB = result of the Annual Party Work Plan and Cost Estimate, procurement, funding application process
 - ◆ Funds remaining from over-budgeted items may be used for other budgeted items
 - ◆ Funds needed for under-budgeted items may be made available only if approved by the EAA Board, after review and recommendation by the PM and the IC

Table 7.1 Legal Principles cont...

- ◆ **Annual Party Work Plan and Cost Estimate Process**
 - ◆ EAA advises the IC of the funds it expects to have available for the next FY
 - ◆ IC unanimously approves the Annual Party Work Plans and Cost Estimates
 - ◆ IC consolidates AWP/CEs into a “proposed” APB for recommendation to the EAA
 - ◆ IC may not submit a proposed APB in excess of the available funding
 - ◆ EAA Board reviews proposed APB and takes action
 - ◆ If approved, the “proposed” APB becomes the “approved” APB
 - ◆ EAA Board may adjust the proposed APB
 - ◆ If IC proposes APB that exceeds available funding, EAA may refer back to the IC
 - ◆ IC adjusts the proposed APB and resubmits to the EAA
 - ◆ Subject to the 2% funding “ceiling”
 - ◆ Includes output of procurement and funding application process

Table 7.1 Legal Principles cont...

- ◆ **Adjustments to the EAA Annual Funding Obligation** (EAHCP p. 7-5; FMA §§ 3.2, 5.2.1)
- ◆ Table 7.1 costs are estimated costs and presumed “adequate”
 - ◆ Adjustment process begins in FY 2014
 - ◆ Adjustments must always meet the “adequate” funding criteria (*cf.* FMA §§ 3.2, 5.2.1)
 - ◆ Adjustments from Table 7.1 allowed based on APB development process (i.e. AWP/CE, procurement, and funding application process)
- ◆ field experience
 - ◆ actual implementation costs
 - ◆ Upward adjustments subject to the 2% funding “ceiling”

Table 7.1 Legal Principles cont...

- ◆ **Notes on Ph. II Costs and Table 7.1** (EAHCP p. 7-1, 7-6, 7-7, 8-6; FMA §§ 3.2, 5.2.1)
 - ◆ Ph. I costs “are expected” to continue into Ph. II
 - ◆ AMP may change this expectation
 - ◆ Ph. I costs are more “detailed” than those in Ph. II
 - ◆ Increases in Ph. II costs are “not anticipated”
 - ◆ Ph. II costs may be “augmented,” subject to AMP
 - ◆ “Additional funding may be necessary beyond that already covered in the FMA”
 - ◆ Ph. II “increases” due to SAWS ASR costs may be “beyond those for which financial assurances in Phase I have already been provided for in the FMA”
 - ◆ O&M costs
 - ◆ Water leasing costs
 - ◆ “No decision has been made regarding the sources of any additional funds” for Ph. II SAWS ASR-related cost increases
 - ◆ Any additional funding over the 2% “ceiling” “will be provided promptly after that decision has been made” (*see* “changed circumstances”)
 - ◆ Potential increases in Ph. II funding are subject to the 2% adjustment “ceiling”

Questions?



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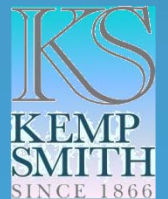
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