

7.1.2 Funding Assurances

Funding to implement the HCP will come from two sources: (1) “aquifer management fees” (“AMF”) assessed by the EAA; and (2) third-party contributions. Through AMFs, the EAA will “fully fund” the implementation of the HCP during both Phase I and Phase II of the term of the ITP. (See FMA §§ 3.2, 5.2.1). Section 1.29 of the EAA Act authorizes the EAA to assess aquifer management fees to finance its administrative expenses and authorized programs. Among the expenses and programs authorized by the EAA Act is the implementation of the HCP. (See EAA Act §§ 1.11(d)(9), 1.14(h), and 1.26A). In addition to AMFs assessed by the EAA to fund its non-HCP programs and expenses, the EAA will also assess a separate AMF to fund the costs of implementing the HCP. (See FMA §§ 1.1.41, 5.1, 5.2.2). This AMF is referred to as the “Program Aquifer Management Fee.” (*Id.* § 1.1.41).

Third-party contributions will be remitted to the EAA by other entities who are not users of the Aquifer and, therefore, do not pay AMFs. (See Joint Funding Agreement (JFA). These other entities include at this time the City of Victoria, Guadalupe-Blanco River Authority (“GBRA”), City Public Service Energy of the City of San Antonio,¹ San Antonio River Authority, Union Carbide Corporation, and the Guadalupe Basin Coalition. The aggregate of the third-party contributions will total at least \$ 735,000 annually towards the costs of the implementation of the HCP. Of that amount, GBRA and Union Carbide Corporation initially will contribute \$400,000 and \$200,000 annually. This amount may be increased by an amount not to exceed 2 percent over the prior year’s amount for a calendar year during the term of the JFA based on an increase in the costs of implementing the HCP as certified by the EAA. (See JFA § 4(c)). Similarly, the amount may also be reduced but not below the initial amount. (*Id.*). These commitments are legally enforceable as reflected in Section 10 of the JFA.

The funding levels that are required to “fully fund” the implementation of the HCP for each year of the term of the ITP are the amounts shown in Table 7.1. (See *id.* §§ 3.2, 5.2.1). The funding levels in Table 7.1 are estimated costs and may be adjusted up or down in light of experience acquired over time in the field and through the securing of actual implementation costs through the procurement process. (See *id.* § 5.2.1). However, the EAA will not be required to provide annual funding from AMFs for Phase I or Phase II in excess of the amount shown in Table 7.1 for 2013 “adjusted for a 2 percent increase, compounded annually, for the years that have elapsed since 2013.” (*Id.*). The actual amount for any particular year during the term of the ITP to be budgeted and funded by the EAA will be set by the EAA based on a recommendation of the Implementing Committee through the unanimous vote of all of the Parties to the FMA with the agreement of the Board of Directors of the EAA. (See *id.* §§ 4.5, 5.2.1, 7.7.5, 7.7.6, 7.11.4, 7.12.4.d., 7.14.5.a.). The amount of funding provided by the EAA for any particular year during the term of ITP is referred to as the “Annual Funding Obligation” which will correlate with the “Annual Program Budget.” (*Id.* §§ 1.1.4, 1.1.5, 4.5, 5.2.1).

¹ CPS Energy is actually a user of the Aquifer and holds groundwater withdrawal permits issued by the EAA, and, therefore, pays AMFs to the EAA. It is also a downstream surface water user.

The EAA will create within the EAA a restricted account known as the “HCP Program Account.” (See *id.* § 1.1.27, 5.4). The Account will have two funds – an operations fund and a reserve fund. (*Id.*). Generally, the EAA will deposit in the operations fund of the HCP Program Account: all Program AMF revenues, third-party contributions, and earnings on investments associated with the HCP Program Account. The EAA will disburse amounts from the operations fund for expenditures for the Annual Program Budget. (*Id.* § 5.4).

To the extent there is a “Fund Balance” (*id.* § 1.1.24) in any particular year over “Program Expenditures,” (*id.* § 1.1.43), the EAA will accumulate the balance in the reserve fund of the HCP Program Account. (*Id.* § 5.5.4). However, the amount that the EAA may accumulate is capped at \$46 million dollars. (*Id.*). This cap is referred to as the “Fund Balance Cap.” (*Id.* § 1.1.25). The reserve fund will allow the accumulation of funds for the projected costs of the VISPO and SAWS ASR measures, full funding for which is needed at irregular periods and is based on a probabilistic analysis of the number of years in which these measures will be triggered as provided in Chapter 5.

In the event the reserve fund is fully funded and the Fund Balance Cap is exceeded, then the “Excess Fund Balance” (*id.* § 1.1.23) will be applied to reduce the Annual Funding Obligation (or Annual Program Budget) of the EAA for the next calendar year. (*Id.* § 5.5.4).

The EAA will begin collecting Program AMFs during fiscal year 2012 prior to the effective date of the ITP to ensure that sufficient funding will be available on January 1, 2013, to begin implementation of the HCP. (*Id.* § 5.2.3).

7.2 Funding Assurances for Any Additional Phase II Measures

To address the need now to demonstrate both the ability and commitment to achieve the existing long-term biological objectives, while recognizing the uncertainty associated with those objectives, SAWS will commit to implement a “presumptive” action that is adequate to achieve the minimum flow management objective. The presumptive action for Phase II of the HCP involves the expanded use of the SAWS ASR associated with a planned construction of the WRIP Pipeline that is currently in the design stage and is scheduled for completion by 2020.

To the extent that such a project cannot be designed and implemented to achieve the goals within the above-described assumptions, additional springflow protection will be obtained through additional CPM pumping cuts in Stage V or other measures that provide an equivalent measure of protection to the Covered Species in San Marcos and Comal springs. (See Section 5.8.2).

SAWS will allow the expanded use of its ASR, if it is needed, to achieve the current biological goals. The opportunity for this commitment is due to SAWS’ construction of the WRIP, which is being done independent of the HCP, and which will be completed by 2020. Although they are not anticipated, there may be increases in the cost of using the ASR, such as operating and maintenance costs or water leasing costs beyond those for which financial assurances in Phase I have already been provided for in the FMA. If so, additional funding may be necessary beyond