Appendix C

Construction Approach and Stranded Assets

SAN JOAQUIN RIVER
RESTORATION PROGRAM

July 2015

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1.0 Introduction

This appendix to the Revised Framework addresses the federal process related to funding and construction of projects. It includes information on the federal budget process, how the San Joaquin River Restoration Program (SJRRP) intends to sequence construction projects and project components, construction contracting, and some examples of funding other large Bureau of Reclamation projects.

2.0 Federal Budget Process

The federal budget process in total takes approximately 2.5 years from the time offices within agencies submit their budget requests to the time Congress passes a budget. The federal fiscal year begins on October 1. The process is extensive and involves many levels of review to ensure federal agencies are making thoughtful expenditure decisions.

There are two types of federal funding: discretionary and mandatory. Discretionary funding is subject to annual approval by Congress. These funds and programs are “discretionary” because the laws that establish them leave Congress with the discretion to set the funding levels each year. Discretionary programs are approximately one third of all federal spending. Mandatory funding is devoted to programs already and cannot be changed without a reconciliation process and passing a bill to change legislation. More than half of all federal spending is mandatory, including Social Security, Medicaid, and Medicare. The SJRRP has both discretionary and mandatory funds.

2.1 Developing the Budget Request

At the end of each calendar year, the SJRRP and other agency offices submit initial budgets for the federal fiscal year 3 years from the current year. For example, initial budget requests are submitted in December 2014 for the Fiscal Year (FY) 2017 budget. These initial budget requests are embargoed, and no budgetary information can be discussed until the President’s budget is released in February of the year prior to the fiscal year in question (i.e., February 2016 for the FY 2017 budget). These budgets address the Office of Management and Budget targets, which are given to the Department of the Interior at the beginning of each budget cycle and distributed between agencies and regions. Office budget requests are rolled up into a regional budget request which is rolled up to the agency budget request.

Reclamation takes the regional budget requests and develops the Commissioner’s proposed budget. This is submitted to the Secretary of the Interior. The Department of the Interior then considers budgets for all the departmental agencies and develops the Secretary of the Interior’s proposed budget to submit to the Office of Management and Budget (OMB).

2.2 OMB Deliberations

Then OMB takes the proposed budgets from all departments and develops the President's budget. As part of this, OMB may submit information requests back to the departments which trickle down to the agencies, regions, and offices and may provide less or more funding for certain programs than the Commissioner's or Secretary's proposed budget.

2.3 President's Budget

Around the first Monday in February, the president submits to Congress a detailed budget request for the next fiscal year beginning October 1 of that year. The President's budget request tells Congress what the President recommends spending for each federal program, what the President recommends taking in as tax revenues, and the resulting deficit. The budget typically includes budget priorities for the next ten years, and usually just includes funding levels for annual appropriations for each program, although it may also propose legislative changes for mandatory funds.

2.4 House and Senate Budget Resolution

Following submission of the President's budget, Congress holds budget hearings questioning the Commissioner and other agency leaders about budgetary requests. The House and Senate budget committees then write budget resolutions. The budget resolutions set targets for spending of discretionary funds and receipts of tax revenue and identify any policies that will need to move through reconciliation to draft legislation. The resolutions are sent to the floor for a vote, and differences are resolved in conference between the House and Senate.

Then, the appropriations committees decide how the discretionary funds allocated in the budget resolution will be spent. Any necessary changes to mandatory funds are addressed by authorizing committees.

The spending totals in the budget resolution are stated in terms of the total amount of "budget authority," and the estimated level of expenditures, or "outlays." Budget authority is how much money Congress allows a federal agency to commit to spend. Federal agencies term the funds they have committed to spend through contracts or financial assistance agreement awards "obligations". Outlays, also known as expenditures, are how much money actually flows out of the federal Treasury in a given year due to paying invoices on contracts or financial assistance agreements.

2.5 Appropriations Committees: Discretionary Spending

The House and Senate appropriations committees divide the aggregate discretionary spending total provided by the budget resolution among each of their subcommittees. Each subcommittee holds hearings on the programs under their jurisdiction and drafts a bill which is then voted out of subcommittee. The full House or Senate appropriations committee marks up the bill and sends it to the floor of the House or Senate. Both the House and Senate pass their bills and negotiate the differences in conference sessions. The House and Senate vote again on the bill following conference negotiations, and the conference report is sent to the President for his signature or veto.

2.6 Authorizing Committees: Mandatory Funding

Mandatory funds are less changeable. Reconciliation occurs if Congress needs to legislate policy changes in mandatory spending or tax laws to meet the targets laid out in the budget resolution. The resolution requires the relevant authorizing committees to come up with authorizing plans and report back to the House and Senate budget committees. The House and Senate budget committees combine all of the authorizing plans into an omnibus package and send it to their respective floor for a vote. The House and Senate work out differences in the omnibus bill package in conference. The House and Senate vote again on the negotiated omnibus bill. The final bill is then sent to the President for signature or veto.

2.7 Presidential Veto

All appropriations bills are targeted to be signed by the President by October 1. When this does not happen, a continuing resolution(s) can be approved to continue funding the agencies at their current levels (usually) and avoid a government shutdown.

2.8 End of Year Expenditures

Occasionally, budgeted amounts are higher than actual expenditures and programs have money they intended to spend that they cannot obligate that fiscal year. In general and although most of Reclamation's funding can be carried over from one year to the next, Reclamation attempts to carry over as little funding as possible. Historically, the SJRRP has had a high capacity to spend due to large denomination realty agreements and contracts that are awarded at the end of the fiscal year, which allows the SJRRP to be competitive for funding from within Reclamation that cannot be obligated by other offices by the end of the fiscal year.

2.9 Other Limitations

Under the 2010 Pay-As-You Go (PAYGO) Act, any legislative changes to taxes or mandatory spending that increase multi-year deficits must be "offset" or paid for by other changes to taxes or mandatory spending that reduce deficits by an equivalent amount. Violation of PAYGO triggers across-the-board cuts ("sequestration") in some mandatory programs to restore the targeted deficit.

3.0 Construction Sequencing

This Revised Framework breaks projects into manageable components to reduce annual funding needs. This sequencing has been done in a logical fashion that attempts to minimize the risk of stranded assets.

For example, the Mendota Pool Bypass and Reach 2B Project has been split into two actions, with the Mendota Pool Bypass to be constructed first and the Reach 2B setback levees constructed at a later date. The Mendota Pool Bypass can function and operate without the Reach 2B setback levees, and would still provide utility to the SJRRP and local water districts and landowners even if the Reach 2B setback levees are never built, as fish would be routed around water diversion facilities.

Additionally, construction projects are split into small components for awarding construction contracts. While much construction acquisition planning has yet to be done, the SJRRP anticipates awarding at least 5 separate construction contracts for just the Mendota Pool Bypass. These contracts may be for Compact Bypass grading and excavation, Compact Bypass levees, the Compact Bypass Bifurcation Structure, the Mendota Pool Control structure, and Columbia Canal siphon pump and regrading. Each of these construction contracts is anticipated to be less than $30 million, and they would be largely awarded in different fiscal years. Reclamation does not have to have $200 million in one year to construct the Compact Bypass portion of the project. Instead, Reclamation intends to award multiple smaller construction contracts with the appropriated or mandatory funds available in a given year, or sequence the award of portions of a larger contract.

Project components are sequenced in a way that attempts to minimize inoperable projects by allowing continued operation even if subsequent contracts are delayed. For example, the Compact Bypass excavation, grading, and levees will occur first. Mendota Pool operations will continue exactly as they occur today until the last construction contract, the Compact Bypass Control Structure construction contract is awarded. Then the remaining section of soil would be excavated and the structure built. Restoration Flows and Mendota Pool operations would continue as they are currently until all the Compact Bypass work is complete, and then the Bifurcation Structure would be opened and operation would begin.

Through the use of project sequencing, splitting large construction projects into smaller components, and sequencing those components, Reclamation intends to minimize stranded assets and approach construction funding in a way that does not result in catastrophic consequences due to funding delays.

4.0 Contracting

The Federal Government is required by the Federal Acquisition Regulations (FAR) to comply with the Anti-Deficiency Act (31 U.S.C. 1341). The FAR states that “No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer shall— (a) Obtain written assurance from responsible fiscal authority that adequate funds are available." Reclamation must also comply with contract clause WBR 1452.232-80, Limitation of Funds. This WBR allows Reclamation to award construction contracts without having the entire amount to fund the contract in the given Fiscal Year. The WBR enables Reclamation to fund construction contracts over multiple Fiscal Years in accordance with appropriations. The Contracting Officer is still required to obtain the written assurance of adequate funding in accordance with section (a) as described above. The other purpose the WBR clause fulfills is to ensure the accurate reporting of actual earnings by contractors.

5.0 Examples

Reclamation has funded several large construction projects recently with appropriated dollars. Folsom Dam Safety Project was funded with Safety of Dams dollars from Reclamation's Denver Office. Planning for the San Luis Drainage Project and demonstration treatment plant was reliant on federal appropriations. As perhaps the most relevant example, the Red Bluff Pumping Plant and Fish Screen was constructed with funds from 2008 through 2014, with $55 million from federal appropriations, $114 million from the American Reinvestment and Recovery Act, and $12 million from the State of California (See Table 5-1). These funds were then split up into a series of construction contracts (see Table 5-2).

Table 5-1 Red Bluff Pumping Plant and Fish Screen Funding Sources

Year	Water and Related Resources	American Reinvestment and Recovery Act	State Trust (State Funds)	Total
FY 2008	$4,520,064.00	$0.00	$0.00	$4,520,064.00
FY 2009	$4,512,348.00	$6,588,655.00	$0.00	$11,101,003.00
FY 2010	$12,220,342.00	$98,897,972.00	$2,230,000.00	$113,348,314.00
FY 2011	$20,249,916.00	$7,289,445.00	$2,704,647.00	$30,244,008.00
FY 2012	$4,414,127.00	$492,451.00	$3,472.00	$4,910,050.00
FY 2013	$7,774,680.00	$503,227.00	$7,061,881.00	$15,339,788.00
FY 2014	$1,040,000.00	$0.00	$0.00	$1,040,000.00
Total	$54,731,477.00	$113,771,750.00	$12,000,000.00	$180,503,227.00
Note: FY 2013 and 2014 are the funding amounts available or requested. FY 2012 and previously are obligations made.				

Table 5-2 Red Bluff Pumping Plant and Fish Screen Construction Contracts

Contract	Amount
Pumping Plant-Fish Screen	$76,628,858
Siphon, Canal, Bridge	$24,663,539
Pumps & Motors	$6,917,371
Terrestrial Mitigation	$4,808,964
Decommissioning	$3,286,000
Environmental Monitoring	$218,411
Fish Rescue	$55,670
Dredge, Boom Truck & Floating Work Platform	$1,450,707
Hazardous Waste Barrel & UST Removal	$35,400
Dredge Trailer	$132,815
Forest Service Well Rehab	$40,272
Pumping Plant-Fish Screen	$76,628,858
Siphon, Canal, Bridge	$24,663,539
Pumps & Motors	$6,917,371
Terrestrial Mitigation	$4,808,964
Total	**$118,238,008**

As a note for comparison purposes, the initial bid for the whole pumping plant, fish screen, switchyard and forebay was $67,066,240, which later had modifications to raise it to $76,628,858. Of that total amount in the initial bid, $31,602,700 was related to the Fish Screen. That included jetting systems for sediment removal, the exterior brush systems for sweeping the screen clean, fish screen panels for each bay plus block out panels for each bay, louvers for flow control through the screen, concrete work and piles including the log barrier. None of the modifications were major increases in the fish screen cost. The Mendota Pool Fish Screen is estimated at $27 million, very near the Red Bluff Fish Screen cost.

6.0 References

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