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Public Review Draft
Part III Guidelines for the Application of Criteria for
Financial Assistance for Local Projects

March 29, 2010

To: All Interested Parties and Organizations

The U.S. Department of the Interior, Bureau of Reclamation, announces the release of the Public Review Draft of the Part III Guidelines for the Application of Criteria for Financial Assistance for Local Projects (Guidelines) under Part III of Subtitle A of Title X of the San Joaquin River Restoration Settlement Act (Public Law 111-11). This document provides guidelines for obtaining Federal financial assistance for groundwater recharge and/or banking projects consistent with Public Law 111-11.

Public Law 111-11 directs the Secretary of the Interior (Secretary), acting pursuant to the Reclamation Act of 1902, as amended, to implement the Stipulation of Settlement in *Natural Resources Defense Council, et al. v. Kirk Rodgers, et al.*, U.S. District Court, Eastern District of California, No. CIV.S-88-1658-LKK/GGH (2006). The Settlement identifies a Water Management Goal "to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows." Public Law 111-11 authorizes Reclamation to provide financial assistance for the planning, design, environmental compliance, and construction of local facilities to bank water underground or to recharge groundwater to reduce, avoid, or offset the quantity of expected water supply impacts to Friant Division long-term contractors caused by the Interim and Restoration flows.

Public Law 111-11 states that Secretary is to develop, in consultation with the Friant Division long-term contractors, proposed guidelines for obtaining Federal financial assistance for groundwater recharge and/or banking projects consistent with Public Law 111-11, and to make the proposed guidelines available for public comment. The Guidelines and public review period fulfill this requirement.

Copies of the Guidelines, Public Review Period, and Submitting Comments: The Guidelines are available for public review and comment for 60 days. Written comments must be received at the following physical or e-mail address below no later than close of business (5 p.m., Pacific Daylight Time), Friday, May 28, 2010:

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The Guidelines may be reviewed during normal business hours (from 8 a.m. to 5 p.m.) at the addresses above. The Guidelines are also available on the SJRRP web site at **www.restoresjr.net** under Program Documents. If you would like to request a compact disk containing the document, please contact Ms. Margaret Gidding at: 916-978-5461 or **mgidding@usbr.gov**.

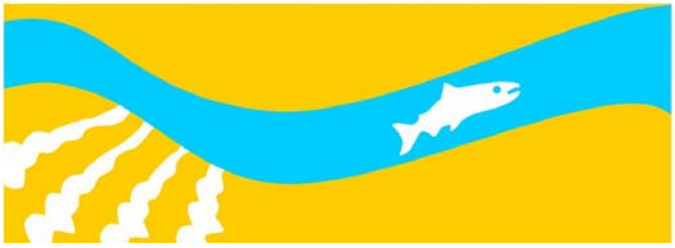
To learn more about the SJRRP and the WY 2010 Interim Flows Project visit www.restoresjr.net.

Public Review DRAFT

Part III Guidelines

Guidelines for the Application of Criteria for Financial Assistance for Local Projects Under Part III of Public Law 111-11

SAN JOAQUIN RIVER
RESTORATION PROGRAM



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March 2010

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Appendix A: Public Law 111-11, Title X, Subtitle A, Part III, Section 10202, Omnibus Public Land Management Act of 2009, Water Settlements, San Joaquin River Restoration Settlement, Friant Division Improvements, Financial Assistance for Local Projects

Appendix B: Memorandum Titled "Criteria and Procedures for Reviewing Cost-Share Agreements on Reclamation Projects"

List of Abbreviations and Acronyms

CCR	Central Contractor Registration
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CVP	Central Valley Project
CWA	Clean Water Act
DFG	California Department of Fish and Game
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FOA	Funding Opportunity Announcement
FONSI	finding of no significant impact
FWCA	Fish and Wildlife Coordination Act
NHPA	National Historic Preservation Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NPDES	National Pollution Discharge Elimination System
O&M	Operation and Maintenance
OMB	Office of Management and Budget
P&G	Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies
Reclamation	U.S. Department of the Interior, Bureau of Reclamation
ROD	record of decision
RWA	Recovered Water Account
Secretary	Secretary of the Interior
Settlement	Stipulation of Settlement
SJRRP	San Joaquin River Restoration Program
USFWS	U.S. Fish and Wildlife Service

1.0 Introduction

The San Joaquin River Restoration Settlement Act (Public Law 111-11) directs the Secretary of the Interior (Secretary), acting pursuant to the Reclamation Act of 1902, as amended, to implement the Stipulation of Settlement (Settlement), dated September 13, 2006, in the litigation entitled Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., U.S. District Court, Eastern District of California, No. CIV.S-88-1658-LKK/GGH. The Settlement identifies a Water Management Goal "to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows." Public Law 111-11 (Part III), refer to Appendix A, authorizes the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), to provide financial assistance to Friant Division long-term contractors within the Central Valley Project (CVP) of California for the planning, design, environmental compliance, and construction of local facilities to bank water underground or to recharge groundwater to reduce, avoid, or offset the quantity of expected water supply impacts to Friant Division long-term contractors caused by the Interim and Restoration flows authorized by Public Law 111-11.

This document provides guidelines for obtaining Federal financial assistance for Friant Division groundwater recharge and/or banking projects as authorized by Part III of Public Law 111-11. Consistent with statutory requirements of Part III and Reclamation policy, the guidelines address the contents of a complete Planning Report as well as the contents of a complete cost-share agreement. The process for obtaining funding under Part III will generally follow the path outlined below.

In response to a Funding Opportunity Announcement (FOA) from Reclamation, project sponsors will submit applications, including planning reports and cost breakdowns as described herein, requesting financial cost-share assistance for construction activities and any additional planning activities required. Reclamation will evaluate, rank, and prioritize the applications based on minimum standards and performance criteria, such as those outlined in these guidelines. Each FOA will define the actual criteria used for these purposes. Reclamation will negotiate cost-share agreements with project sponsors of applications receiving the highest rankings.

2.0 Planning Report

2.1 Requirements

Part III of Public Law 111-11 requires appropriate planning, design, and environmental compliance activities associated with a proposed project in order to be eligible for Federal financial assistance. To satisfy this requirement, the project sponsor will prepare a planning study in accordance with this section. Reclamation will evaluate proposed projects based on the information provided in the Planning Report.

The Planning Report must include: a statement of the problem and need, groundwater recharge and/or banking opportunities, a description of project alternative(s), consistency with selection considerations, an economic analysis, cost-share/Recovered Water Account (RWA) reduction determination, an environmental analysis, legal and institutional requirements, and financial capability to implement the project. The Planning Report should emphasize, wherever possible, the public benefit that would result from awarding Federal financial assistance to the project sponsor(s).

If a Planning Report has already been completed by a project sponsor in another format, or if the information is available in other reports such as regional studies, the sponsor can prepare an Executive Summary document following the suggested outline and provide references indicating where the supporting information may be found. The supporting information should be provided to Reclamation with the Executive Summary.

2.2 Recommended Planning Report Outline

2.2.1 Executive Summary

This can draw on existing reports and studies as described above.

2.2.2 Introduction

Set forth the purpose of the study, who (what entity) prepared the study report, and the non-Federal sponsor(s) of the project.

Describe the study area and provide an area/project map. Define the study area in terms of the service area of the project sponsor(s), the site-specific project area where the water will be recharged and/or banked (if different than the service area of the project sponsor(s)), and in the larger regional, watershed or river basin context.

2.2.3 Problem and Need

Describe the water supply objective of the project sponsor(s) and all key water management problem(s) for which the groundwater recharge and/or banking project may provide a solution. Provide a description of the near- and long-term water demand and supplies in the study area, including the expected shortages resulting from the

implementation of the San Joaquin River Restoration Program (SJRRP). Identify quantities in acre-feet and when such quantities will be needed. Identify the cost to acquire those supplies, if known, and assess the level of certainty associated with those estimates.

2.2.4 Groundwater Recharge/Banking Opportunities

Address the opportunities for groundwater recharge and/or banking in the study area and identify the sources of water available for these purposes. In acre-feet, include quantities that could be recharged and/or recovered.

2.2.5 Description of Project Alternatives

Describe a minimum of three project alternatives, including the proposed project alternative, that were considered to accomplish the water supply objective identified above. These measures may include structural and/or nonstructural measures such as water conservation. These alternatives may have already been addressed in other reports.

Describe the no action alternative as well as the action that the sponsor would take if Federal funding was not provided for the project. Describe the project sponsor(s)' ability to recharge and recover groundwater without the project.

Provide a map or drawing for each alternative.

Provide a description of each alternative including the physical, institutional, or operational features needed for a fully functioning alternative, and how each alternative would operate. The description must include how each alternative would benefit the public.

Provide an engineering cost estimate and an estimate of the project yield over the life of the project as described in the "Economic Analysis" section of these guidelines.

The following apply to the proposed project alternative only:

Discuss the dedicated use of, or market for, the groundwater that would be recovered, including the entity recovering the water and/or any contractual commitments for using the groundwater.

Describe any barriers to the recovery and use of groundwater in the study area and how these barriers would be overcome.

Discuss how the proposed project alternative would promote or apply a regional or watershed perspective to water resource management or cross-boundary issues. Describe how the Friant Division and/or other Friant Division long-term contractors may be able to participate and/or share in the benefits from the proposed project. Identify known opportunities to expand, combine, or otherwise link projects of other Friant Division long-term contractors to provide synergistic benefits to the region.

Describe the nature and magnitude of Federal participation in the proposed project alternative. Quantify the anticipated level of Federal benefit (e.g., quantity of annual

project yield available for purchase to address unexpected seepage losses in accordance with the Settlement) and any costs associated with Federal participation.

2.2.6 Consistency with Selection Considerations

The “Selection Considerations” section of these guidelines identifies minimum criteria that will be used to determine the eligibility of a project sponsor’s application for funding and identifies selection considerations for purposes of evaluating and ranking the project sponsor’s application. Describe how the proposed project meets the minimum criteria, and provide information on the proposed project to enable an evaluation to be made in accordance with the selection considerations.

2.2.7 Economic Analysis of Alternatives

Present an analysis of the economic feasibility of the project alternatives as described in the "Economic Analysis" section of these guidelines. This analysis will evaluate the cost-effectiveness of the project alternatives.

2.2.8 Cost-Share/Recovered Water Account Reduction Determination

Determine the percentage of the proposed project that is eligible for Federal cost-sharing and propose a method to be used to perform RWA reduction calculations consistent with the “Project Benefit Methodology” section. This information will support the cost-share agreement, defined in the “Cost-Share Agreement” section.

2.2.9 Environmental Analysis of Alternatives

Provide the environmental information on the project alternatives that Reclamation will need to fulfill its obligations under National Environmental Policy Act (NEPA). This includes information on the existing environment including social and cultural resources and endangered species; an assessment of the environmental impacts of the proposed project; identification of applicable Federal and State environmental requirements; and mitigation measures where appropriate. Refer to the "National Environmental Policy Act and Other Applicable Federal Environmental Statutes” section of these guidelines for further discussion on this subject.

2.2.10 Legal and Institutional Requirements

Describe the results of any consultation activities under the Endangered Species Act (ESA), Fish and Wildlife Consultation Act (FWCA), and other applicable Federal and State laws, that have occurred between the non-Federal sponsor and appropriate Federal, State, regional, and local authorities during the study (refer to the “National Environmental Policy Act and Other Applicable Federal Environmental Statutes” section of these guidelines).

Identify the public health and environmental quality issues associated with the proposed project. Include Federal, State, and local public health and environmental regulatory requirements associated with the proposed project and the ability of the project to meet those requirements.

Provide an analysis of the effects of the change of the source water from its current use to the proposed groundwater recharge and/or banking use, including economic and

environmental effects, and effects on downstream water rights. Discuss any water right issues and how they would be resolved.

Discuss how the project meets other legal and institutional requirements, if any, such as contractual water supply obligations, Indian trust responsibilities, water rights settlements, regional water quality control boards, or other requirements not previously addressed.

Discuss known legal and institutional constraints associated with the project that may affect the ability of the project sponsor to implement the project, how the issue(s) would be resolved, and how the project would be affected if the issue(s) is not resolved.

2.2.11 Management and Financial Capability of the Sponsor

Present the proposed schedule and approach for project implementation and the plan for funding the proposed project's construction, operations and maintenance (O&M), and replacement costs, including the non-Federal and other Federal sources of funding.

Document the sponsor's financial capability to fund the non-Federal share of the project costs following the "Management and Financial Capability" section of these guidelines.

2.3 Selection Considerations

2.3.1 Introduction

A project sponsor's application must meet the minimum criteria identified in Part III of Public Law 111-11 to be eligible for Federal financial assistance. Those applications deemed eligible will be evaluated, prioritized, and ranked in accordance with the performance criteria established in the FOA.

2.3.2 Minimum Project Criteria

Eligibility for Federal financial assistance will be based on meeting all of the following criteria identified in Part III:

1. A minimum of one CVP contractor must be a project sponsor.

2. All or a portion of the project benefits must be dedicated to reducing, avoiding or offsetting water supply impacts to Friant Division long-term contractors resulting from the release of Interim Flows or Restoration Flows.

3. Planning, design, and environmental compliance activities have been completed in accordance with the "Planning Report" section of these guidelines, or the application requests to cost-share these activities.

4. The proposed cost-share does not exceed 50 percent of the planning, design, and environmental compliance costs and 50 percent of the construction costs.

5. The application provides and/or assists in providing recharge or banking of water underground and/or the recovery of such water.

6. The application must be a complete and fully functional unit; capable of providing the stated benefits without the completion of future phases and additional new facilities.

2.3.3 Evaluating, Prioritizing, and Ranking of Applications

Reclamation will evaluate, prioritize, and rank all eligible applications based on the performance criteria established in the FOA. The evaluation process may include discussions with project sponsors to maximize water management opportunities. The performance criteria established in the FOA could include, but may not be limited to, the criteria listed below:

- Broadest Benefit: Applications will be evaluated based on their ability to provide the broadest benefit to the Friant Division service area and the public. Applications that provide water supply benefits for multiple Friant Division long-term contractors will be given higher priority than those applications that benefit only one Friant Division long-term contractor. The prioritization process will emphasize, to the greatest extent possible, the equitable distribution of water supply benefits to all Friant Division long-term contractors.

- RWA Reduction: Applications will be evaluated based on their effectiveness at reducing the RWA of the project sponsor(s). Applications that demonstrate a higher RWA reduction potential will be given higher priority. The RWA reduction potential of a project will be determined in accordance with the "Project Benefit Methodology" section of these guidelines.

- Cost Effectiveness: Applications will be evaluated based on the Federal cost per unit of new yield produced to provide RWA reduction. Applications with the lowest Federal cost per unit of new yield produced to provide RWA reductions will generally be given highest priority. It should be noted that while the "Economic Analysis" section determines the cost effectiveness of all project alternatives based on total project costs, this section will evaluate the cost effectiveness of the proposed project based on the Federal cost-share portion only. This includes any Federal cost-share funding for planning and environmental compliance and mitigation activities requested by the project sponsor. Therefore, project sponsors requesting less Federal funding per unit of new yield to provide RWA reduction will receive higher priority.

- Environmental Impacts: Applications will be evaluated based on the number and severity of identified environmental impacts, as well as the complexity and cost of any mitigation strategies. Applications with fewer and less significant environmental impacts will be given higher priority than applications with significant impacts.

- Legal and Institutional Constraints: Applications will be evaluated based on the number and severity of identified legal and institutional constraints, as well as the complexity and cost of mitigation strategies. Applications with fewer and less significant legal and institutional constraints will be given higher priority.

- Federal Participation: To remain eligible for funding, a project sponsor must offer to the Secretary any project capacity in excess of that required to reduce, avoid, and offset water supply impacts resulting from the release of Interim and Restoration flows at a price no higher than the project sponsor's costs; or offer to the Secretary an expansion of project capacity if feasible. Applications having available capacity for Federal participation, or the ability to expand capacity for Federal participation, will be given higher priority. Projects funded under Part III of Public Law 111-11 will be owned and operated by one or more non-Federal project sponsors. Therefore, Federal participation in a project is expected to be limited to operational agreements with the project sponsor(s), including, but not limited to, agreements to bank water purchased by the Federal government in a project sponsor's facility or agreements to purchase yield from a project sponsor's facility.

- Risk and Uncertainty: Applications will be evaluated on the apparent risk and uncertainty associated with a proposed project. Applications that provide a comprehensive discussion and analysis of known and expected risks and uncertainty along with practical mitigation strategies will be given higher priority over applications that are less carefully planned and more speculative in nature.

- Management and Financial Capability: Applications will be evaluated on the management and financial capabilities of the project sponsor(s) as determined in accordance with the "Management and Financial Capabilities" section of these guidelines. Applications that provide a complete and robust description of the project sponsor(s)' past performance with Federal financial assistance and comprehensive and rigorous Implementation and Financial Plans will be given higher priority over applications that demonstrate a poor history of performance and provide vague Implementation and Financial Plans with little detail.

2.4 Economic Analysis

2.4.1 Introduction

Reclamation must demonstrate prudent use of Federal financial resources. A Planning Report for a Part III groundwater recharge and/or banking project must include an assessment of the economic feasibility of the proposed project and its alternatives. This assessment must demonstrate the degree to which the groundwater recharge and/or banking project is cost effective.

2.4.2 The Economic Analysis

The basic guidelines for evaluating water development projects at the Federal level are embodied in the Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies (P&Gs). However, Part III groundwater recharge and banking projects are locally sponsored projects with Reclamation participation. The local sponsor owns the project and is responsible for O&M; therefore, the projects are not to be construed as Federal projects. Because these projects are not federally built and owned, the P&Gs and the National Economic Development test will

not be applied. Rather, the economic analysis described in this section will be used by Reclamation to evaluate the project in comparison to other proposed projects.

Proposed projects and their alternatives will be compared on the cost effectiveness of producing a water supply or reducing water demand such that water supply impacts associated with the SJRRP are reduced, avoided, or offset. While there is a conceptual difference between economic benefit evaluation and cost effectiveness, cost effectiveness is a viable means of evaluating proposed projects, as long as the Part III legislative requirements are addressed. Economic benefits are concerned with additions to the Nation's output of goods and services and/or improvements in the efficiency of production of those goods and services, whereas cost effectiveness is more typically associated with the comparison of alternatives for producing the intermediate product, in this case the water supply, and is expressed as the cost per unit of water produced (Project Cost/Project Yield).

The project sponsor(s) will provide the primary inputs to the cost effectiveness analysis, including detailed information on project costs and benefits as measured by the yield from the project. These are described in more detail in the sections below.

Project Cost

Provide a construction cost estimate for each project alternative in sufficient detail to permit evaluation and comparison of the alternatives. Construction cost estimates will generally include costs for major structures, facilities, or other types of construction as appropriate for the project. Direct construction costs should be based on quantities and unit prices. Lump-sum estimates should be used only for items of relatively small cost and where developing the estimates are impractical or unnecessarily costly. Indirect costs, including contingency costs, should be less than or equal to 20 percent of total construction costs. If the project sponsor is requesting Federal cost sharing for planning and environmental compliance and mitigation activities, these costs should also be included in the project cost of the alternatives.

Project Yield

Determine the yield, or amount of recoverable supply, of each project alternative over the expected life of the project for the purpose of reducing the RWA. The engineering analysis will use a project life cycle of 30 years and a corresponding period of the hydrologic record. Note: If a proposed project's life-cycle yield exceeds the water supply impacts due to Interim and Restoration flows over the life of the project, the portion of a project's yield above the water supply impacts cannot be included in the cost effectiveness calculation.

2.5 Project Benefit Methodology

2.5.1 Introduction

Part III of Public Law 111-11 requires the development of a method, acceptable to the Secretary, for quantifying the benefit that will result from the proposed project in terms of reducing, avoiding, or offsetting the water supply impacts caused by the release of

Interim and Restoration flows. The project benefits quantified under this methodology will justify the portion of a project that a local agency designates as eligible for Federal financial assistance through a construction cost-share agreement. The project benefits quantified under this methodology will also serve as the basis for the magnitude of reductions to a local agency's RWA resulting from the implementation of projects made possible through Federal financial assistance.

2.5.2 Federal Cost-Share Eligibility

To determine the portion of a proposed project eligible for Federal financial assistance, a project sponsor must demonstrate the project's ability to reduce, avoid, or offset the water supply impacts resulting from the release of Interim and Restoration flows. This can be accomplished by documenting the total expected water supply impacts to the project sponsor(s) and the expected capability of the project to reduce, avoid, or offset these impacts over the life of the project.

The project sponsor(s) must perform a technical analysis to demonstrate the total yield of the project over the life of the project as described in the "Economic Analysis" section of these guidelines. The total project life-cycle yield will be compared with the total expected water supply impacts incurred over the life of the project as determined by the Settlement Model of Deliveries and Releases from Friant Dam. Any portion of a project that provides yield in excess of the total water supply impacts is not eligible for Federal financial assistance.

2.5.3 Recovered Water Account Reductions

Reductions to RWAs resulting from the implementation of projects receiving Federal financial assistance for construction under Part III will be quantified in accordance with a method proposed by the project sponsor(s) in the Planning Report and agreed to by Reclamation. The method should be based on actual deliveries of water to any portion of a project that has received Federal cost-share funding and should be initiated upon signing of the cost-share agreement.

2.6 National Environmental Policy Act and Other Applicable Federal Environmental Statutes

2.6.1 Introduction

A Reclamation agreement to provide construction funds for a locally sponsored groundwater recharge and/or banking project is a Federal action to which NEPA applies. NEPA and accompanying Council on Environmental Quality (CEQ) regulations require Reclamation to determine the environmental impacts of its proposed actions before implementing the proposed actions.

The ESA, the FWCA, the National Historic Preservation Act (NHPA), and other environmental statutes, as well as cultural resources, Native American, and environmental justice requirements also apply to such funding agreements. Reclamation must determine, in consultation with the appropriate agencies, whether certain species or other resources will be affected by a specific project.

2.6.2 Policies

In accordance with Part III and Reclamation policy, Reclamation will not execute a cost-share agreement for construction of a groundwater recharge and/or banking project until NEPA and other environmental and cultural resource requirements are met. If locally funded construction of a groundwater recharge and/or banking project is begun by the local project sponsor before these requirements are met, the project sponsor assumes the risk that their action may result in no Federal funding for the project, either through their irretrievable commitment of a resource during construction, or through construction of an alternative whose impacts cannot be mitigated.

2.6.3 Responsibilities Under NEPA

Reclamation is responsible for meeting NEPA requirements, but a project sponsor can help by providing as much information and necessary data analysis as possible in the Planning Report consistent with this section. Upon request, Reclamation will help potential project sponsors to identify how best to do this, and to identify any other environmental requirements that apply to the project. In addition to providing information on other requirements specified in this section, the project sponsor should answer the following questions about the project alternatives, which focus on the requirements of NEPA, the Endangered Species Act, and the NHPA:

- Will the project alternatives impact the surrounding environment (i.e., soil (dust), air, water (quality and quantity), animal habitat)? Explain the impacts and any steps that can be taken to minimize the impacts.
- Are there any endangered or threatened species in the project area?
- Are there wetlands inside the project boundaries? Estimate how many acres of wetlands exist, and describe any impact the project alternatives will have on the wetlands.
- If the project alternatives will affect individual features of an irrigation or other conveyance system (e.g., head gates, canals, or flumes), state when those features were constructed and describe the nature and timing of any extensive alterations or modifications to those features.
- Are buildings, structures, or features in the project area listed or eligible for listing on the National Register of Historic Places?
- Are there known archeological sites in the project area?

Reclamation is responsible for an independent analysis of alternatives. If the project sponsor chooses, it may hire and fund a contractor to prepare NEPA documentation (third-party contracting) as part of the Planning Report, subject to certain limits and disclosures. Reclamation must assure all essential information is obtained, and the analysis is adequate to meet NEPA standards.

2.6.4 NEPA Compliance Process

Once it has been established that there is a proposed Federal action, in this case a proposed cost-share agreement for construction, Reclamation's next step is to determine relevant issues and the potential magnitude of environmental impacts. To do this, Reclamation uses one of several tools, depending on the action and the issues involved.

These tools range from an environmental assessment (EA) leading to a finding of no significant impact (FONSI); an EA leading to a determination of potential significant effects and preparation of an environmental impact statement (EIS); and an EIS with a record of decision (ROD). Each involves a different level of effort, time, and resources.

Not all groundwater recharge and/or banking projects will require a full EIS process or substantial public involvement. But at a minimum, an EA should be available to the public for review. Federal funding of groundwater recharge and/or banking project construction does not fit under one of Reclamation's categorical exclusions from the EA/EIS process. Reclamation's NEPA Handbook provides details on this process.

2.6.5 Scope of Alternatives

Reclamation will look at the entire groundwater recharge and/or banking project as proposed, and its alternatives, including no Federal action, rather than just the impact of the Federal funds on the project. To the greatest extent possible, the alternatives presented in the Planning Report should match the NEPA alternatives. A significant change in the project design could result in a need to change the NEPA analysis or alternatives. Similarly, analyzing NEPA alternatives can result in changes in the project.

2.6.6 Coordination of NEPA Activities with the Planning Report

NEPA activities may be completed or even started after the project sponsor's Planning Report is complete. In these cases, the NEPA process may uncover information on alternatives, potential environmental impacts, or mitigation not identified in the Planning Report that could significantly affect project design or construction, or operational decisions, or even Federal funding decisions. In such a case, it may be necessary to revise the Planning Report or project plans to receive Federal funds.

2.6.7 Other Environmental Statutes

For all other environmental requirements not discussed in this section, Reclamation and the project sponsor will work closely together to identify and comply with the requirements for a proposed project, and to determine who is responsible for each requirement (Reclamation or the project sponsor). Typically, these are all considered as a package within the NEPA process at the planning stage. For some requirements, such as Section 7 ESA consultation, Reclamation is responsible and must take the lead. In some cases, such as obtaining Clean Water Act (CWA), State, or local permits, the project sponsor is responsible.

In a project, these actions may include, but are not limited to:

- Consult under ESA with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) if endangered or threatened species may be affected.
- Consult under the FWCA regarding modifications to a water body that would affect fish and wildlife.
- Identify NPDES (402), 404, or other permits required under the CWA.

- Identify affected historic sites or cultural resources under the NHPA or other cultural resource statutes, and consult with the State Historic Preservation Officer and Advisory Council for Historic Preservation.
- Identify Native American or other trust resources affected.
- Consider the environmental justice implications of the proposed project.
- Consider the air quality implications of the proposed project.
- Coordinate with the California Environmental Quality Act (CEQA).
- Obtain a permit with the California Department of Fish and Game (DFG) if take of State-listed threatened or endangered plant or animal species may occur.
- Obtain an agreement with DFG if alteration to stream features may occur.
- Identify and coordinate with State or Federal public health requirements regarding recharge and recovery of groundwater supplies.
- Identify and coordinate with State water right petition requirements.
- Identify and coordinate with local agency regarding local plans and policies.

2.6.8 Coordination with California Environmental Quality Act

Part III projects will also need to comply with CEQA. The information from this process will be useful in assisting Reclamation to meet its NEPA obligations, but there are differences in compliance with the two laws and CEQA compliance cannot automatically substitute for Reclamation's NEPA compliance obligations. If timing permits, these differing requirements may be addressed in a single document. The project sponsor will be responsible for CEQA compliance.

2.6.9 The Endangered Species Act

A funding agreement for construction of a groundwater recharge and/or banking project is an action covered by the ESA. Under Section 7 of the ESA, Federal agencies are required to ensure that actions they fund, permit, or carry out are not likely to jeopardize the continued existence of a species federally listed as threatened or endangered, or adversely affect or destroy critical habitat designated for those species.

The ESA compliance process begins with a request to either the USFWS or NMFS for a report of listed species or listed critical habitat in or near a proposed project area. If the USFWS or NMFS determines that there are no listed species or listed critical habitat in or near the proposed project area, then compliance has been completed. If there are listed species or critical habitat in or near the proposed project area, then Reclamation prepares a biological assessment to determine if the project may affect listed species in the area. Reclamation may designate the project sponsor or its contractor to prepare this assessment, but Reclamation, as the responsible Federal agency, must conduct formal consultation if that becomes necessary. If Reclamation determines there is no effect to listed species or critical habitat then compliance is completed. If, however, Reclamation determines that the proposed action may affect, but is not likely to adversely affect the listed species, it must obtain the concurrence of either the USFWS or NMFS.

If the biological assessment shows that a species or its habitat may be adversely affected, formal consultation is required. Formal consultation is concluded when the USFWS or NMFS publishes a final biological opinion as to whether or not the project is likely to jeopardize the continued existence of a species (referred to as "jeopardy" or "no jeopardy"). Reclamation has an opportunity to review and comment on this opinion before it is final. A jeopardy opinion usually identifies reasonable and prudent alternatives to the project that would avoid placing the species in jeopardy or affecting critical habitat, and reasonable and prudent measures to reduce incidental taking of the species.

Reclamation must notify the USFWS or NMFS if it accepts the alternative, and must agree to implement the measures, before the proposed project may proceed. Reclamation will include these measures in any funding agreement for project construction as commitments of the project sponsor.

2.6.10 The Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act of 1934, as amended, requires Federal agencies proposing to construct or to issue permits for construction of projects affecting streams, lakes, or other watercourses to consult with the USFWS and State wildlife agencies before final approval of the project. Reclamation is required to consider recommendations made by wildlife agencies concerning the project's wildlife aspects, and if not implementing them, identify why not. Reclamation may adopt changes in project plans to mitigate damage to wildlife resources and, where possible, to enhance such resources. Reclamation, however, retains the authority to decide which mitigation measures recommended by the USFWS, if any, to incorporate into the project plan. The mitigation recommendations made by the USFWS are incorporated into the NEPA process in preparing an EIS or EA.

Reclamation will involve the sponsor in the process of developing mitigation measures with the USFWS. Once agreed upon, these measures will become part of the project design, and will be so identified in the ROD or the FONSI. Implementation or inclusion of these measures in the project will be required.

2.7 Management and Financial Capability

2.7.1 Introduction

Pursuant to Part III, the non-Federal sponsor of a project must demonstrate the financial capability and willingness to fund the non-Federal share of the construction costs and all annual O&M costs. This demonstration must be included in the Planning Report and submitted to Reclamation along with supporting documents.

A self-certification alone is not deemed adequate because Reclamation has a responsibility to ensure that Federal funds are prudently invested. The project sponsor(s) must demonstrate the capability to manage and finance the project.

2.7.2 Implementation and Financial Plans

The project sponsor must include an implementation plan for the project that outlines the plan of action and details how the proposed work will be accomplished, including the acquisition of required permits and approvals. The plan should cite factors that might accelerate or decelerate the work and reasons for taking this approach as opposed to others. The plan should also describe unusual features of the project, such as design or technological innovations, innovative cost- and time-saving measures, or extraordinary social and community involvements required to implement the project. The implementation activities should be shown in chronological order to depict the schedule of accomplishments and expected target completion dates, and the criteria to be used to evaluate the results and success of the project should be discussed.

The project sponsor must also include a financial plan in the Planning Report that includes plans for funding the construction costs identified in the "Economic Analysis" section of these guidelines, as well as the proposed method for funding the project O&M. The plan should include project life-cycle funding, i.e., it should quantify and show how repairs and replacements will be funded, as well as continuing O&M and environmental compliance costs. If applicable, demonstration of financial capability can be drawn from documents that have been prepared by an entity providing the non-Federal cost-share funding and/or were required to obtain the non-Federal cost-share funding.

2.7.3 Non-Federal Funding

The non-Federal project sponsor may obtain the requisite funding by a variety of methods. If bonding authority is used, i.e., municipal bonds, a copy of the underwriter's report or prospectus should be included with the project submittal. This report will describe the inherent risk in the bond issue. A form of certification from the underwriter is necessary to demonstrate the bonds have been sold and the money made available to the sponsor. In those instances where non-Federal funding is dependent on the availability of Federal funds, an indication of bond rating and impending sale will suffice as preliminary documentation. If a bond election and/or formal approval of a governing body (Board of Directors or City Council) is required to provide taxing authority to refund the bonds, a certification of election results and/or a copy of the approved resolution should be included.

In instances where a State Revolving Fund will provide some or all of the non-Federal cost-share, a certification of loan availability should be provided. Federal sources of funding involved in the project must also be identified, as all Federal sources of funding together cannot exceed 50 percent.

If another financing method is used, Reclamation will seek appropriate supporting documentation during review of the application and Planning Report.

2.7.4 Additional Supporting Information

The project sponsor must provide a detailed description of its past project performance, including but not limited to, experience with projects of similar size and complexity, results of any Office of Management and Budget (OMB) Circular A-133 Single Audits, and details of any debarment or suspension from Federal assistance programs.

Registration in the Central Contractor Registration (CCR) database will be required to apply for the Part III financial assistance.

3.0 Cost-Share Agreement

3.1 Requirements

In accordance with Part III of Public Law 111-11, a project will only be eligible for Federal financial assistance if all or a portion of the project is designed to reduce, avoid, or offset the quantity of expected water supply impacts to Friant Division long-term contractors caused by the Interim or Restoration Flows, and such quantities have not already been reduced, avoided, or offset by other programs or projects.

In accordance with Part III, Federal financial assistance will only be provided for construction of a project if the Secretary:

1. Determines that appropriate planning, design, and environmental compliance activities associated with such a project have been completed.

2. Has been offered the opportunity to participate in the project at a price that is no higher than the local agency's own costs.

3. Determines that the local agency has the financial capability and willingness to fund its share of the project's construction and all operation and maintenance costs annually.

4. Determines that an acceptable method has been developed for quantifying the benefit of the project, in terms of reducing, avoiding, or offsetting the water supply impacts expected to be caused by the Interim or Restoration Flows, and for ensuring appropriate adjustment in the RWA.

5. Has entered into a cost-share agreement with the local agency, which commits the local agency to funding its share of the project's annual construction costs.

3.2 Procedures and Content of Agreements

Part III of Public Law 111-11 requires the execution of a cost-share agreement with the project sponsor(s) before awarding Federal financial assistance. In preparing cost-share agreements, Reclamation will follow procedures in the Reclamation Manual and Reclamation's Financial Assistance Handbook, as well as procedures and guidance in the Code of Federal Regulations (CFR) and the OMB Circulars listed below:

- 2 CFR Part 225, "Cost Principles for State, Local, and Indian Tribal Governments"
- 43 CFR Part 12, "Administrative and Audit Requirements and Cost Principles for Assistance Programs"

- OMB Circular A-102, “Grants and Cooperative Agreements with State and Local Governments”
- OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”

Reclamation will also adhere to its policy memorandum of March 9, 2000, titled “Criteria and Procedures for Reviewing Cost-Share Agreements on Reclamation Projects." This memorandum provides guidance on the types of local costs that may be included for cost-sharing purposes. A copy of this memorandum is included in Appendix B. The memorandum also provides the requisites for obtaining and following up on Single Audits, as prescribed by OMB Circular A-133 (“Audits of States, Local Governments, and Non-Profit Organizations"). The cost-share agreement must contain information about these requirements.

Reclamation will abide by the standard definitions of cooperative agreement and grant agreement in choosing the funding vehicle for any one action. The degree of Federal participation in the action(s) covered by the agreement is the key factor. A grant agreement is used when Federal participation in the activity is minimal. Cooperative agreements are used when there is a greater degree of Federal involvement in the activities. It is anticipated that grant agreements will be used for all projects under Part III of Public Law 111-11.

Reclamation will not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs.

The cost-share agreement will commit the project sponsor to funding its share of the project’s planning and construction costs identified in the financial plan in the “Management and Financial Capability” section of these guidelines annually. A cost-share agreement must also include a certification that O&M expenses are not included in the agreement, and are not in the bills and accounting records provided to Reclamation for auditing purposes.

The cost-share agreement for construction activities will include a detailed plan for reducing the RWA of the project sponsor(s) resulting from Part III projects as described in the Planning Report.

Reclamation will review each cost-share agreement annually.

3.3 Cost Sharing

Cost-share agreements for construction activities will fund those portions of a project identified as reducing, avoiding, and offsetting water supply impacts resulting from the release of Interim and Restoration flows as defined by the project sponsor(s) in the Planning Report. Construction work performed under Section 10202 of Part III is eligible for a Federal cost-share up to 50 percent of total eligible construction costs. Planning work performed under Section 10202 of Part III is eligible for a Federal cost-share up to 50 percent of the total eligible planning costs.

3.4 Allocation Schedule and Rules

Reclamation will issue an FOA beginning with the first appropriation of Part III funding. In response to the FOA, project sponsors will submit applications, including the Planning Reports, to Reclamation. These applications will be allocated funding based on Reclamation review and prioritization. The initial allocation will be limited to the amount of funding initially appropriated and will be followed by subsequent rounds of FOAs and allocations as additional funding is appropriated. Any unallocated funds from the initial rounds will be made available in subsequent rounds until all funds have been allocated.

During each round of allocations, applications will be evaluated against minimum project criteria and prioritized and ranked in accordance with performance criteria established in the FOA, as described in the "Selection Considerations" section of these guidelines. The project sponsors of the highest ranking applications will proceed to cost-share agreement discussions with Reclamation. The project sponsors of those applications deemed ineligible for allocation in any round may resubmit their applications during the subsequent round.

3.5 Timing of Cost-Share Agreements

Reclamation will develop cost-share agreements for those applications that become eligible for reimbursement through the allocation process outlined above. Reclamation will not execute a cost-share agreement for construction of a project until NEPA compliance activities are complete. However, if planning and construction activities are included in the same cost-share agreement, the funding of construction activities will be contingent on the completion of NEPA compliance activities.

3.6 Eligible Cost-Share Contributions

The memorandum titled "Criteria and Procedures for Reviewing Cost-Share Agreements on Reclamation Projects" (Appendix B) provides guidance on the types of local costs, in addition to construction, which may be included for cost-sharing purposes. Only those planning and construction activities specifically addressed in the cost-share agreement will be eligible for reimbursement.

3.7 Project Ownership

Title to projects funded under Part III will remain in one or more non-Federal local agencies, which will also operate and maintain these projects.

3.8 Project Reporting Requirements

3.8.1 Introduction

In accordance with Part III, the Secretary is authorized to require any local agency receiving Federal financial assistance under Part III to submit progress reports and accountings to the Secretary, as the Secretary deems appropriate. All reports submitted under this section will be publicly accessible.

3.8.2 Performance Reports

Performance reports will be submitted annually for all planning studies and construction projects until expiration or termination of the Part III financial assistance. The performance reports should include, at a minimum, a comparison of actual accomplishments to the objectives established for the period, the reasons for slippage if established objectives were not met, analysis and explanation of cost overruns, percent-complete estimates, negative developments that will materially impair the ability to meet the project objectives and mitigation actions that have or will be taken to resolve the issues, and favorable developments that enable meeting objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

3.8.3 Financial Status Reports

Financial Status Reports will be submitted annually for all planning studies and construction projects until expiration or termination of the Part III financial assistance. The Financial Status Reports will report project outlays and project income on a cash or accrual basis, as prescribed by Reclamation.

3.8.4 RWA Reports

Projects receiving Federal financial assistance under Part III of Public Law 111-11 will be required to submit RWA reports to the Secretary providing a detailed accounting of project operations to document required RWA reductions in accordance with the method proposed in the “Project Benefit Methodology” section of these guidelines and agreed to by Reclamation. These RWA reports will be provided to Reclamation annually, or more frequently as required to maintain consistency with the RWA accounting process established in the Restoration Flow Guidelines, for the life of the project.

Appendix A

Public Law 111-11,
Title 10, Subtitle A, Part III, Section 10202
San Joaquin River Restoration Settlement Act
Friant Division Improvements
Financial Assistance for Local Projects

Fresno, Madera, Merced, Stanislaus, and San Joaquin counties in California.

(b) USE OF PLAN.—The Integrated Regional Water Management Plan developed for the 2 hydrologic basins under subsection (a) shall serve as a guide for the counties in the study area described in subsection (a)(2) to use as a mechanism to address and solve long-term water needs in a sustainable and equitable manner.

(c) REPORT.—The Secretary shall ensure that a report containing the results of the Integrated Regional Water Management Plan for the hydrologic regions is submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives not later than 24 months after financial assistance is made available to the California Water Institute under subsection (a)(1).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,000,000 to remain available until expended.

PART III—FRIANT DIVISION IMPROVEMENTS

SEC. 10201. FEDERAL FACILITY IMPROVEMENTS.

Studies.

(a) The Secretary of the Interior (hereafter referred to as the "Secretary") is authorized and directed to conduct feasibility studies in coordination with appropriate Federal, State, regional, and local authorities on the following improvements and facilities in the Friant Division, Central Valley Project, California:

(1) Restoration of the capacity of the Friant-Kern Canal and Madera Canal to such capacity as previously designed and constructed by the Bureau of Reclamation.

(2) Reverse flow pump-back facilities on the Friant-Kern Canal, with reverse-flow capacity of approximately 500 cubic feet per second at the Poso and Shafter Check Structures and approximately 300 cubic feet per second at the Woollomes Check Structure.

(b) Upon completion of and consistent with the applicable feasibility studies, the Secretary is authorized to construct the improvements and facilities identified in subsection (a) in accordance with all applicable Federal and State laws.

(c) The costs of implementing this section shall be in accordance with section 10203, and shall be a nonreimbursable Federal expenditure.

SEC. 10202. FINANCIAL ASSISTANCE FOR LOCAL PROJECTS.

(a) AUTHORIZATION.—The Secretary is authorized to provide financial assistance to local agencies within the Central Valley Project, California, for the planning, design, environmental compliance, and construction of local facilities to bank water underground or to recharge groundwater, and that recover such water, provided that the project meets the criteria in subsection (b). The Secretary is further authorized to require that any such local agency receiving financial assistance under the terms of this section submit progress reports and accountings to the Secretary, as the Secretary deems appropriate, which such reports shall be publicly available.

Reports. Public information.

(b) CRITERIA.—

(1) A project shall be eligible for Federal financial assistance under subsection (a) only if all or a portion of the project is designed to reduce, avoid, or offset the quantity of the

expected water supply impacts to Friant Division long-term contractors caused by the Interim or Restoration Flows authorized in part I of this subtitle, and such quantities have not already been reduced, avoided, or offset by other programs or projects.

Applicability.

(2) Federal financial assistance shall only apply to the portion of a project that the local agency designates as reducing, avoiding, or offsetting the expected water supply impacts caused by the Interim or Restoration Flows authorized in part I of this subtitle, consistent with the methodology developed pursuant to paragraph (3)(C).

Determinations.

(3) No Federal financial assistance shall be provided by the Secretary under this part for construction of a project under subsection (a) unless the Secretary—

(A) determines that appropriate planning, design, and environmental compliance activities associated with such a project have been completed, and that the Secretary has been offered the opportunity to participate in the project at a price that is no higher than the local agency's own costs, in order to secure necessary storage, extraction, and conveyance rights for water that may be needed to meet the Restoration Goal as described in part I of this subtitle, where such project has capacity beyond that designated for the purposes in paragraph (2) or where it is feasible to expand such project to allow participation by the Secretary;

(B) determines, based on information available at the time, that the local agency has the financial capability and willingness to fund its share of the project's construction and all operation and maintenance costs on an annual basis;

(C) determines that a method acceptable to the Secretary has been developed for quantifying the benefit, in terms of reduction, avoidance, or offset of the water supply impacts expected to be caused by the Interim or Restoration Flows authorized in part I of this subtitle, that will result from the project, and for ensuring appropriate adjustment in the recovered water account pursuant to section 10004(a)(5); and

Contracts.

(D) has entered into a cost-sharing agreement with the local agency which commits the local agency to funding its share of the project's construction costs on an annual basis.

Deadline.
Public comment.

(c) GUIDELINES.—Within 1 year from the date of enactment of this part, the Secretary shall develop, in consultation with the Friant Division long-term contractors, proposed guidelines for the application of the criteria defined in subsection (b), and will make the proposed guidelines available for public comment. Such guidelines may consider prioritizing the distribution of available funds to projects that provide the broadest benefit within the affected area and the equitable allocation of funds. Upon adoption of such guidelines, the Secretary shall implement such assistance program, subject to the availability of funds appropriated for such purpose.

(d) COST SHARING.—The Federal financial assistance provided to local agencies under subsection (a) shall not exceed—

(1) 50 percent of the costs associated with planning, design, and environmental compliance activities associated with such a project; and

(2) 50 percent of the costs associated with construction of any such project.

(e) PROJECT OWNERSHIP.—

(1) Title to, control over, and operation of, projects funded under subsection (a) shall remain in one or more non-Federal local agencies. Nothing in this part authorizes the Secretary to operate a groundwater bank along or adjacent to the San Joaquin River upstream of the confluence with the Merced River, and any such groundwater bank shall be operated by a non-Federal entity. All projects funded pursuant to this subsection shall comply with all applicable Federal and State laws, including provisions of California water law.

(2) All operation, maintenance, and replacement and rehabilitation costs of such projects shall be the responsibility of the local agency. The Secretary shall not provide funding for any operation, maintenance, or replacement and rehabilitation costs of projects funded under subsection (a).

SEC. 10203. AUTHORIZATION OF APPROPRIATIONS.

(a) The Secretary is authorized and directed to use monies from the fund established under section 10009 to carry out the provisions of section 10201(a)(1), in an amount not to exceed $35,000,000.

(b) In addition to the funds made available pursuant to subsection (a), the Secretary is also authorized to expend such additional funds from the fund established under section 10009 to carry out the purposes of section 10201(a)(2), if such facilities have not already been authorized and funded under the plan provided for pursuant to section 10004(a)(4), in an amount not to exceed $17,000,000, provided that the Secretary first determines that such expenditure will not conflict with or delay his implementation of actions required by part I of this subtitle. Notice of the Secretary's determination shall be published not later than his submission of the report to Congress required by section 10009(f)(2). Determination. Notice. Publication.

(c) In addition to funds made available in subsections (a) and (b), there are authorized to be appropriated $50,000,000 (October 2008 price levels) to carry out the purposes of this part which shall be non-reimbursable.

Subtitle B—Northwestern New Mexico Rural Water Projects

Northwestern New Mexico Rural Water Projects Act. Native Americans. 43 USC 371 note.

SEC. 10301. SHORT TITLE.

This subtitle may be cited as the "Northwestern New Mexico Rural Water Projects Act".

SEC. 10302. DEFINITIONS. 43 USC 407 note.

In this subtitle:

(1) AAMODT ADJUDICATION.—The term "Aamodt adjudication" means the general stream adjudication that is the subject of the civil action entitled "State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de

Appendix B

Memorandum Titled "Criteria and Procedures for Reviewing Cost-Share Agreements on Reclamation Projects"

7-1598 (9-89)
Bureau of Reclamation

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MEMORANDUM

To: All Regional Office Managers and Area Office Managers

From: Darryl Beckmann
Regional Manager of Resource and Technical Services

Subject: Criteria and Procedures for Reviewing Cost-Share Agreements On Reclamation Projects

Attached are criteria and procedures for reviewing cost-share agreements which are associated with Reclamation projects. These changes have been necessitated by changes in the applicable Office of Management and Budget (OMB) Circulars. Changes in the criteria procedures have been made to reflect recent revisions to OMB Circular A-133. *The Reclamation Financial Assistance Handbook, Grants and Cooperative Agreements* is also being revised to reflect these procedures.

Questions regarding these changes should be referred to Cathy Hall at (208) 378-5109.

Daryl Beckmann

Attachments

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CRITERIA FOR COST SHARING ON GRANTS AND COOPERATIVE AGREEMENTS FOR RECLAMATION PROJECTS

These criteria will be applicable in nearly all cases where cost-sharing arrangements are being negotiated, e.g., general investigations, construction, drought activities, Title 28 of Public Law 102-575, water reclamation and reuse under Title 16 of Public Law 102-575, and operation and maintenance. Although these criteria were established for cost-sharing arrangements, they are applicable to non-cost sharing agreements as well, except where criteria for agreements are specifically addressed in legislation. A portion of the criteria is synopsized from OMB Circular A-87 which provides guidance on allowable costs for grants and cooperative agreements with State and local governments and Indian tribal governments. It is suggested A-87 be used as a reference document and supplementary guidance for these criteria. Guidance on cost-share criteria for other types of recipients is found in the following documents: OMB Circular A-21 "Cost Principles for Educational Institutions," OMB Circular A-122 "Cost Principles for Non-Profit Organizations," and 48 CFR Subpart 31.2 - Contracts with Commercial Organizations, for all other types of organizations.

The cost-sharing agreement with the non-Federal partner must be negotiated prior to planning or construction and should include the allowable items to be cost shared based on the following criteria. This is a "shopping list" of items which may be included in the agreement based on the needs of the specific case. As a general rule, no costs that would have occurred in the absence of the project can be claimed as cost sharing. While the audit focused on construction activities, there are certain items included in these criteria which are applicable to planning activities.

Cost-Sharing Criteria

1. Right-of-way (ROW). Donations of right-of-way can be accepted if needed by Reclamation for the project. The value shall be determined based on the appraised or fair market value. The cost of appraisals and overhead related to the acquisition may be included. No premiums are allowed unless warranted by project needs. All rights-of-way acquired for the project shall become the property of the Federal Government.

2. Force account labor. The use of force account labor by the entity must be agreed to by Reclamation prior to use. The value shall be the actual cost not to exceed contractor rates in the local area. The labor shall be limited to skills/activities directly related to the project. Managing agencies which utilize their personnel for the construction and/or operation and maintenance of facilities may include those costs in a cost-share agreement.

3. Data and data collection. Data and data collection activities must be approved and accepted prior to use by Reclamation's manager of the activity. The manager must determine if the data are needed and relevant. The manager must also determine if the data and/or data collection is realistically valued. One measure of value (not the only measure) is what it would cost Reclamation to collect the data or perform the collection effort. As appropriate, the data or collection must meet but not exceed Reclamation and/or industry specifications, e.g., land classification data. Credit for previously collected data will not be permitted if it is collected as a

routine activity of the entity in administering its program. Credit for a data collection program requires the program be initiated specifically to meet the requirements for the activity associated with the cost-share agreement.

4. Engineering, design, construction management, and geological services. Reclamation must provide prior approval for the task. The services must meet, but not exceed Reclamation and/or industry standards and, as appropriate, meet Reclamation design specifications. The Reclamation manager must determine if the costs are realistically valued. One measure of the value (not the only value) is what it would cost Reclamation to perform the service in-house. Reclamation or the cost-sharing entity should not select the firm which performed the engineering or prepared the designs to also handle the construction management for the project.

5. Modeling (any type). Reclamation frequently utilizes models developed by other organizations, such as economic models, hydrologic models, and numerous others. These may be numeric or physical models. Any models developed or built cannot exceed what is actually needed for project purposes. The Reclamation manager must determine if the costs are realistically valued. One measure of value (not the only one) is what it would have cost the Federal Government to perform the service in-house. Credit for the cost of adapting old models is permitted, if the model can be adapted to current needs. Credit for the original development costs are not permitted, except some proration of costs, i.e., a fair rental value can be permitted with prior approval from Reclamation. Credit cannot be given if the model was originally developed with Federal funds. In cases where the actual cost is less than the estimated cost of development, the allowable credit is limited to the actual cost.

6. Legal. Legal expenses required directly in the administration of the cost-share or grant program are permissible. Legal services furnished by the chief legal officer of a State, local, or Indian tribal government or associated staff solely for the purpose of discharging the general responsibilities as legal officer are unallowable as direct costs. Legal expenses incurred in connection with defense against Federal claims or appeals and for the prosecution of claims or appeals against the Federal Government are unallowable.

7. Water rights services. Generally this will not be applicable in cost sharing because the local entities control the rights and include that as a part of obtaining the project.

8. Financial services (bonds). Underwriting fees for bonds and similar expenses associated with raising financial capital or the management thereof are not allowable as direct costs. Normally in cost-sharing and grant programs this category is not applicable. However, if Reclamation requires an applicant to have bonds available to pay for cost overruns, the underwriting costs will be allowable.

9. Interest. Costs incurred for interest on borrowed capital, however represented, are unallowable, except as specifically provided for in OMB Circulars A-21 (Cost Principles for Educational Institutions, A-87 (Cost Principles for State, Local and Indian Tribal Governments),

and A-122 (Cost Principles for Non-Profit Organizations), or as otherwise authorized by Federal legislation. The essence of the provision is that under certain conditions, financing costs (including interest) associated with building acquisition, construction, fabrication, reconstruction, or remodeling are allowable. In addition, financing costs (including interest) associated with otherwise allowable costs of equipment can be permitted under certain circumstances. Reference should be made to the Circulars for more detailed information.

10. Goods and services. Any goods or services which were previously purchased with funds from any Federal source cannot be used as a cost share. This particularly applies to constructed project features. Credit may be given for any existing facility constructed earlier if it is specifically used for the project and was funded by non-Federal sources.

11. Buildings (see also rental costs). Two alternative methods, use fees or depreciation, may be used to compute the allowable share when the Federal Government is using buildings owned or constructed by non-Federal entities. Compensation for the use of buildings may be made through use allowances or depreciation.

A. Use fees. Use allowances are the means of providing compensation in lieu of depreciation. The computation of use allowances or depreciation shall be based on the acquisition costs of the assets involved. The computation of use allowances or depreciation will exclude the cost of the land. The use allowance for buildings and improvements (including land improvements such as paved parking areas, fences, and sidewalks) shall be computed at an annual rate not exceeding 2 percent of the acquisition cost (derived from OMB Circular A-87). The use allowance method for buildings, the entire building must be treated as a single asset and the building's components (e.g., plumbing system, heating, and air conditioning) cannot be segregated from the building's shell.

B. Depreciation. When the depreciation method is used, the type of construction and nature of use may be taken into consideration. Unless the use dictates otherwise, the straight line method shall be used considering the expected life of each component. Under this method, a building's shell may be segregated from the components and each item depreciated over its useful life or the entire building may be depreciated over a single life. No depreciation or use charge may be allowed on any assets that have been fully depreciated except in unusual circumstances and with prior approval of Reclamation.

The allowance for use fees and/or depreciation shall terminate at completion of the cost-share agreement, i.e., if the cost share agreement runs for 2 years, then 4 percent credit for the building acquisition cost may be allowed as a part of the cost-share agreement. In any event, no credit on a direct charge basis may be included for buildings the recipient acquires as a part of their ongoing operational requirements or the Federal Government constructs as a part of the project. This applies where the Federal Government is using non-Federal buildings. Credit may be given if the construction, modification, or acquisition of a building is directly attributable to the project.

12. Equipment. The cost of equipment and repairs which materially increase the value or useful life of capital assets are unallowable as a direct cost except when specifically approved by Reclamation. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than 1 year and an acquisition cost of more than $5,000. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6-2/3 percent of acquisition cost of usable equipment (derived from OMB Circular A-87). When replacing equipment purchased in whole or in part with Federal funds, the grantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to approval of Reclamation. Capital expenditures which are not charged directly to a Reclamation award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment.

Similar to buildings, the use fee and/or depreciation terminates at the end of the cost-share agreement. In any event, no direct cost credit may be given for equipment which the entity acquires as a part of its ongoing operational requirements or the Federal Government donates as a part of the project. Managing agencies that provide equipment for the construction and/or operation and maintenance of facilities may be included in cost-share agreements.

13. Rental costs. Rental costs are allowable to the extent they are reasonable relative to the rental costs for comparable property; market conditions in the area; and the type, life expectancy, condition, and value of the property leased. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the entity continued to own the property. Credit for entity-owned equipment on a per-day, hourly, or mileage basis is allowed as long as the charges do not exceed normal use or rental rates. Rental costs under less-than-arms length leases are allowable only up to the amount that would be allowed had the title to the property vested in the governmental unit. Rental costs under leases which create a material equity in the leased property or which are required to be treated as capitalized leases under generally accepted accounting principles are allowable only up to the amount that would be allowed had the entity purchased the property on the date the lease agreement was executed. All rental costs should be reevaluated and approved on a yearly basis.

14. Administrative costs

A. Accounting. The cost of establishing and maintaining accounting systems expressly for the purpose of administering the grant or cost share is allowable. Credit is limited to the increase in the cost of the accounting system that can be directly attributed to the cost sharing agreement or grant. The cost of maintaining central accounting records required for overall administration by the entity is not allowable as a direct charge to the project.

B. Advertising. Advertising is allowable for purposes of recruitment of personnel directly related to the grant or cost share, solicitation of bids for the procurement of goods and services required, disposal of scrap or surplus materials acquired in the performance

of the grant or cost share, and other purposes specifically provided in the grant or costshare agreement.

C. Audit service. The cost of audit services necessary for the administration of the grant or cost share is allowable. In cases where a whole organization is audited, only a pro rata share may be permitted. The method for determining the share should be determined prior to conducting the audit.

D. Bonding. Costs of premiums on bonds covering employees who handle the grantee agency funds are allowable.

E. Budgeting. Costs incurred for the preparation and execution of budgets specific to the grant or cost share are allowable. Costs for the services of a central budget office are not allowable as direct costs since these are costs for the general operation of the entity.

F. Employee morale, health and welfare costs. The cost of health or first-aid clinics, recreational facilities, employee counseling services, employee information publications, and any related expenses are allowable if directly related to administration of the grant or cost share. Income from any of these activities will be offset against expenses. These are typically charged to a project through an indirect cost rate.

G. Exhibits. Costs of exhibits relating specifically to the grant or cost-share program are allowable.

H. Operation and maintenance costs. The costs of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition and (2) do not add to the permanent value of property and are not otherwise included in rental or other charges for space. These expenses are generally treated as indirect costs to the project. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures.

I. Overhead. Overhead costs are allowable to the extent they are directly related and attributable to the project. However, overhead costs are frequently indirect costs which benefit more than one cost objective and are not readily assignable to the cost objective specifically benefitted. In this case, these costs may be distributed among the cost objectives if the effort is not disproportionate to the results achieved. Otherwise, these costs cannot be utilized.

J. Payroll preparation. The costs of preparing payroll and maintaining necessary wage records specifically for the grant or cost share are allowable. Payroll preparation as a part of normal entity operations is not allowable as a direct cost.

K. Personnel administration. Costs of recruiting, examination, certification, classification, training, establishment of pay standards, and related activities related to the grant or cost share are allowable. Credit for these activities is not allowable as a direct cost if they are a normal part of entity operations.

L. Printing and reproduction. Costs for printing and reproduction services necessary for grant or cost-share administration are allowable. Publication costs of reports or other media relating to the grant or cost-share accomplishments or results are allowable when specifically provided for in the agreement. The cost of printing by the Federal Government should be considered in determining if cost sharing is necessarily appropriate.

M. Procurement service. The cost of procurement service, including solicitation of bids; preparation and award of contracts; and contract administration in providing goods, facilities, and services for the grant or cost share is allowable.

N. Training and education. The cost of in-service training, customarily provided for employee development, which directly benefits or is necessary for the grant or cost share is allowable. Out-of-service training is allowable only when specifically authorized by Reclamation. This should not be permitted except in highly unusual circumstances.

0. Transportation. Costs incurred for freight, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable if directly related to the grant or cost share.

P. Travel costs. Travel costs are allowable for expenses for transportation lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the grant or cost-share program. Only the portion of the costs specific to the project are allowable. If the trip is to conduct other business in addition to work associated with the cost-sharing agreement, then only a pro rata share of the trip is allowable.

Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except under certain conditions detailed in the applicable cost principles.

Although there are several categories of costs shown, not all are anticipated to be applicable for every agreement, and these costs may be lumped together for small contracts and agreements.

15. Environmental compliance. An acceptable approach is for both parties to cost share the preparation of an environmental compliance document. The entity gets credit only for the costs incurred in preparing its portion of the report. Costs associated with investigations and surveys, public involvement, evaluations, and coordination activities, i.e., the entire environmental process, may be included. Additional costs required for State compliance may be included if compliance is part of the grant or cost-share program and the entity would not have otherwise incurred the cost. Cost sharing for preparation of environmental compliance documents and other related matters should be negotiated ahead of time on a case-by-case basis. Application of other guidelines in these criteria for specific items may be necessary. In some instances, such as permanent water transfers or transfers of facilities, it is anticipated the entity will be required to pay the entire cost of environmental compliance. In negotiating the agreement, consideration should be given to which entity can perform the task at the least cost while ensuring the quality of the product.

16. Mitigation costs. These costs are normally joint project costs and subject to cost share or grant based on the project cost allocation. Donation of ROW or tracts of land should be valued at the fair market value. Water rights should be valued at fair market value, if a market value can be determined, or actual expenditure, if applicable. If neither approach can be utilized, the right should be valued in its most likely alternative use.

17. Studies. Grants to do studies or the inclusion of studies in the cost share are permitted if directly related to the project. The Reclamation manager should determine if the studies are realistically valued. One measure of value (not the only measure) would be what it would cost Reclamation to conduct the studies.

MAJOR STEPS FOR REVIEWING GRANTS AND COOPERATIVE AGREEMENTS

Reclamation enters into numerous arrangements with external organizations (recipients) to accomplish a variety of activities related to the conduct of the Reclamation program. Among these activities are general investigations and planning activities for new projects, water management studies, construction of various project features, drought program activities, recreation features under Title 28 of Public Law 102-575, water reuse studies and construction activities under the authority of Title 16 of Public Law 102-575, and operation and maintenance of projects. The arrangements may be with State and local governments, universities, irrigation districts, municipalities, and numerous other organizations. The procedures for establishing agreements and grants are set in legislation, the Department Manual, the Reclamation Manual, Reclamation's Financial Assistance Handbook, and various other documents, including a number of Office of Management and Budget (OMB) Circulars.

For agreements not exceeding $300,000, agreement administrators should ensure that costs are allowable in accordance with applicable OMB Circulars, and are allocable to the agreement. This could be accomplished on an on-going basis, or, at a minimum, prior to closeout.

For agreements exceeding $300,000, periodic (at least annual) reviews of agreements are required to ensure compliance with various regulations. A final review of costs and accomplishments should also be made after completion of the work specified in the agreement. The procedure should include the following:

1. Reviews should be conducted by personnel determined appropriate by the region/area office, i.e., personnel responsible for the award and administration of the agreements, cost/price analysts, technical representatives, etc.

2. Reviews should be properly documented, and should be signed and dated by participating personnel. Documentation may be as simple as a Memorandum to the File, as long as it documents any findings and how they are resolved.

3. The review should verify that performance and financial reports have been submitted in accordance with OMB Circulars A-102 and A-110, as implemented by 43 CFR Part 12. Recipients are required to submit project performance reports and financial reports at least annually, but not more than once per quarter, and final performance and financial reports not later than 90 days after expiration of the agreement.

4. The review should verify that single audits have been made in accordance with OMB Circular A-133, and a copy of the audit received if there are any findings relative to Reclamation. A management decision, as defined in the Circular, must be issued within 6 months after receipt of the audit report regarding any finding, and follow-up with the recipient made to ensure that it takes appropriate and timely corrective action. The Circular now requires that recipients be responsible for follow-up on audit findings, which includes preparing a summary schedule of any

prior audit findings and taking the necessary steps to resolve current year findings based on a corrective action plan.

5. Amounts paid under agreements should be reviewed to ensure costs are allocable to the agreement, and allowable as prescribed by OMB Circular A-21 "Cost Principles for Educational Institutions," OMB Circular A-87 "Cost Principles for State and Local Governments," OMB Circular A-122 "Cost Principles for Non-Profit Organizations," or 48 CFR Subpart 31.2 - Contracts with Commercial Organizations, for all other organizations. If the authorizing legislation for the agreement prohibits certain costs, ensure that payment has not been made for those costs, i.e., operation and maintenance costs for water reuse agreements under Title XVI of Public Law 102-575. Percentages or amounts specified or agreed upon for cost sharing should be verified to ensure compliance. If costs are reviewed each time a billing is received, that fact should be included in the documentation of the review.

6. At the completion of these reviews, any problems discovered should be resolved with the recipient within a reasonable time (approximately 6 months). If there are concerns about specific areas or problems, the Office of Inspector General can be requested to review those areas. Any additional audits or reviews requested should be coordinated with the cognizant or oversight agency, as defined in OMB Circular A-133.