

Reclamation Manual

Directives and Standards

Subject: Title I, Reclamation States Emergency Drought Relief Act of 1991(Act), as amended (Public Laws 102-250 and 106-566)

Purpose: Identifies Reclamation’s process for administering and implementing applicable sections of Title I of the Act to undertake activities that would minimize or mitigate drought damages or losses within the 17 Reclamation States and Hawaii, including tribes within those states.

Authority: Title I, Reclamation States Emergency Drought Relief Act of 1991 (Public Law 102-250, 43 USC §§2201-2214), as amended by Public Law 106-566; and Federal Acquisition Regulation (FAR), Chapter 1 of Title 48 CFR.

Contact: Water Resources Office, D-5500

1. Summary of Authorities.

- A. **Section 101** of the Act authorizes the Commissioner to undertake construction, management, and conservation activities that minimize, or can be expected to minimize, losses and damages resulting from drought conditions. Any construction activity is limited to temporary facilities, except for wells.
- B. **Section 102** provides for temporary contracts to make available project and nonproject water and to allow use of Reclamation facilities for the storage and conveyance of water.
- C. **Section 103** authorizes loans for construction, management, and conservation activities or the acquisition and transportation of water consistent with State law.
- D. **Section 104** provides that the programs and authorities established under this title shall become operative in any Reclamation State and in the State of Hawaii: (1) only after the Governor of the affected State or the governing body of an affected tribe makes a request and the Secretary determines that requests for drought assistance are merited; or (2) if there is an approved contingency plan under Title II. The Governors in Idaho, Montana, Oregon, or Washington must coordinate with the Bonneville Power Administration before making a request.
- E. **Section 105** authorizes the Secretary to approve financial assistance for drought contingency planning in the form of cooperative agreements within the 17 Reclamation States and Hawaii.

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2. Authorized Actions to Mitigate Drought Impacts.

- A. Construction.** Consistent with existing contractual arrangements and applicable State and Federal law, Reclamation may undertake construction, management, and conservation activities that minimize losses and damages resulting from drought conditions. Such activities may occur within or outside of authorized project areas. Construction activities are limited to temporary facilities except for wells which may be constructed on a permanent basis. The design of temporary facilities will be limited to those standards necessary to address drought impacts.
- B. Water Acquisitions and Conveyances.** In order to minimize losses and damages resulting from drought activities, Reclamation may provide nonfinancial assistance to willing buyers in their purchase of available water supplies from willing sellers. Reclamation may purchase water from willing sellers or utilize Reclamation facilities for the storage and conveyance of project and nonproject water, purchased or leased under the Act, to mitigate drought impacts or losses. Such water may be used both within and outside of authorized project service areas. Purchasing or leasing water will be done in conformance with State laws.
- C. Water Banks.** Reclamation may participate with State water banks to minimize drought impacts and provide nonfinancial assistance to willing buyers in their purchase of water from willing sellers.
- D. Loans.** Reclamation may also provide loans to water users for construction of temporary facilities or permanent wells, management and conservation activities, or for the acquisition and transportation of water to mitigate impacts resulting from drought conditions.

3. Reimbursable and Nonreimbursable Activities.

- A. Construction, Management, or Conservation Activities.** In pursuing approved construction, management, or conservation activities under Section 101(a), Reclamation may undertake the activities itself or through acquisition contracts governed by the FAR. Costs (labor, supplies, administrative costs, etc.) incurred by Reclamation in carrying out activities approved under Section 101(a) are nonreimbursable. In other words, if Reclamation performs the work or directly contracts for services or deliverables for construction, management, and conservation activities to minimize losses and damages from drought, the costs are nonreimbursable. Funding provided directly to requesting entities to carry out approved activities will be reimbursed to Reclamation using the loan provisions of Section 103 of this Act.

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- B. **Purchasing, Storing, or Conveying Water.** The cost for purchasing, storing, or conveying water or for the use of Reclamation facilities will normally be reimbursable. However, Reclamation may make project and non-project water (purchased, stored, conveyed, or delivered) available on a nonreimbursable basis for the purpose of protecting or restoring fish and wildlife habitat.
- C. **Process for Nonreimbursable Work Agreements for Unusual and Compelling Urgency.** If Reclamation contracts for specifically defined deliverables, including construction services, rather than undertaking the activities itself, Reclamation will enter into a written agreement with the drought assistance requestor. The agreement must provide for the temporary use of contract deliverables by the requestor and address operation and maintenance costs during the life of the agreement; however, ownership of the property remains with Reclamation.
- D. **Contracting Officers.** Contracting officers may acquire contract deliverables under the authority of FAR 6.302-2, unusual and compelling urgency. In order to apply this authority, contracting officers will examine relevant facts on a case-by-case basis. If appropriate under FAR 5.202(a)(2), contracting officers need not submit the notice required by FAR 5.201.
4. **Tribal Assistance.** Pursuant to Public Law 93-638, an Indian tribe is entitled to contract for any activities that Reclamation would otherwise conduct pursuant to Section 101(a) of the Act on the tribe's behalf which would exclusively benefit the tribe. The costs would thus be nonreimbursable. The tribe must request funds from the Drought Program as required under Section 101(a) of the Act.
5. **Temporary Contract for Procurement of Non-Fish and Wildlife Water.**
- A. **Temporary Contracts.** The procurement of water on a temporary basis will be accomplished through a temporary contract, once a request has been approved by the Commissioner or his designee. Temporary contracts will comply with State law and may allow for delivery of water within or outside of authorized project service areas. Contracts will not exceed 2 years. The contract will provide that Reclamation may terminate the contract at any time upon its determination that the contract is no longer warranted due to water supply conditions. Reclamation will not consider ability to pay in the cost of the water, consistent with the Commissioner's memorandum dated July 7, 1999.
- B. **Price for Project Water on Project Lands.** Temporary contracts will specify that the price for project water to project lands will recover all Federal operation and maintenance, administrative, and an appropriate share of capital costs, including interest

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on such capital costs allocated to municipal and industrial water. The contracts will also provide that contractors must pay all costs of the water within the contract term.

- C. **Price of Project Water to Nonproject Lands.** The price of project water delivered to nonproject lands will be at full cost. Full cost is defined in Section 202(3) of the Reclamation Reform Act of 1982 (RRA) and further defined by Reclamation Policy dated July 23, 1992, Volume 2, Section 6 of the RRA Reference Manual.
- D. **RRA.** For information regarding application of the RRA and other Federal Reclamation law with regard to Title I activities, see the memorandum from the Director of the Program Analysis Office dated July 8, 1996, in Section 16 of the RRA Reference Manual. The RRA Reference Manual information can be obtained from regional office acreage limitation staff or the RRA Team in the Office of Policy, D-5200.
- E. **Interest Rate.** For all contracts under Title I of the Act, the interest rate used for computing interest during construction and interest on the unpaid balance of the capital costs will be determined by the Secretary of the Treasury as specified in Section 102(c)(1) of the Act. This rate is to be used for all deliveries of water for municipal and industrial purposes from existing facilities to nonproject contractors. Otherwise, for existing facilities, the rate will be as authorized for that Federal Reclamation project. In the absence of an authorized rate, the rate will be as determined by the Secretary of the Treasury as specified in Section 102(c)(3) of the Act. The payment of capital costs will be placed into the Reclamation Fund, to the credit of the project from which such water is supplied or for the use of project facilities.
6. **Loans.** The specific terms and conditions of loans will be determined by the Secretary through the Commissioner. Interest rates will be determined as required by Section 103 of the Act, and repayment periods will not exceed 15 years. Loans will not be approved unless the applicant has demonstrated an ability to pay within the terms of the loan. Ability to pay will be determined pursuant to current policies and procedures used by the Water Contracts and Repayment Section, Office of Policy, D-5600. When completing loans, please contact the Water and Contracts Repayment Group, Office of Policy, for the most current information concerning processing loans for the Commissioner's approval.
- A. **Contracts.** Pursuant to Section 103 of the Act, contracts will not be subject to Sections 203(a) (provisions of RRA to apply to any contract entered into subsequent to enactment of RRA) and 220 (temporary use of irrigation water) of the RRA and Sections 105 and 106 of Public Law 99-546 (contracting for Central Valley Project water).
- B. **Written Notice.** At least 30 days prior to final approval of a loan, the Commissioner will provide written notice to the Committee on Energy and Natural Resources of the

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Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

7. **State and Federal Laws.** All actions will comply with applicable State and Federal laws, including but not limited to the Endangered Species Act, Davis-Bacon Act, National Environmental Policy Act (NEPA), and National Historic Preservation Act (NHPA). The Council on Environmental Quality's regulations (40 CFR 1506.11) concerning emergency actions may apply and should be reviewed regarding NEPA compliance.
8. **Delegation of Authority.**
 - A. **Commissioner's Authority.** The Commissioner may delegate authority to approve drought assistance requests. Such delegation will be done by written document and distributed to the Regional Directors.
 - B. **Drought Assistance Authority.** After approving drought assistance, the Commissioner (or the person granted such authority) will delegate drought assistance authority to the appropriate Regional Director on a case-by-case basis. In some cases, when the Regional Director concurs, authority may be delegated to the Area Manager. Any delegation will include requirements for the implementing office to develop the necessary agreements (contracts, memorandum of agreement, etc.) prior to implementation. The delegation will also provide that it is effective for 6 months, i.e., approved funds must be spent or obligated within 6 months of the date of delegation. Any funds remaining after the 6 months will be returned to the drought fund unless an extension is granted by the Commissioner (or the person granted such authority).
9. **Request for Assistance.**
 - A. **Provisions.** The Act provides that the programs and authorities established under Title I become operative in any Reclamation State, as follows:
 - (1) After the Governor(s) of the affected State(s) or the governing body of the affected tribe has requested drought assistance and the Secretary determines that such temporary assistance is merited; or
 - (2) Upon the approval of a drought contingency plan as provided in Title II of the Act.
 - B. **Determination.** If a State or tribe has completed a drought contingency plan, Reclamation will determine whether the plan meets the goals and intentions of Title II of the Act. (See RM, *Title II, Reclamation States Emergency Drought Relief Act of 1991*, WTR XX-XX). If Reclamation so determines and submits the plan to Congress, drought declarations are not required before a request for assistance is considered.

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- C. **Declaration of Drought.** If no plan has been submitted to Congress, the Governor(s) of the affected State(s) or the governing body of the affected tribe must issue a declaration of drought. Reclamation will consider a drought declaration to be effective for 1 year after the date of issuance. After a declaration is issued, a water user may request emergency drought assistance. If the drought-affected area is within the area covered by the Bonneville Power Administration (BPA), the Governor of the State of Washington, Oregon, Idaho, or Montana must coordinate the request for assistance with the Administrator of the BPA.
10. **Review and Approval Process.** A flowchart (appendix A) that delineates the review and approval process for Title I assistance is attached to this directive. Also attached is a checklist (appendix B) that identifies the basic information that must be received by the Reclamation Drought Coordinator to facilitate the timely processing of requests. Once a completed request is submitted from the Region to the Denver office, the Reclamation Drought Coordinator will confirm receipt of such request within 30 days of receipt.
11. **Responsibilities.**
- A. **Reclamation Drought Coordinator.** The Reclamation Drought Coordinator (D-5500) is responsible for acknowledging receipt of and reviewing all requests for assistance; coordinating the initial request with the Regional or Area Office; consulting with the Regional or Area Office regarding the request and the need, if any, for additional information from the customers; consulting with the Commissioner or the person granted such authority, as needed, regarding the response to the person or entity making the request; drafting the response letters for signature by the Commissioner or the person granted such authority; and making funds available to the Regional or Area Office for implementation of approved actions.
- B. **Regional Drought Coordinator.** Before forwarding requests for drought assistance to the Reclamation Drought Coordinator, the Regional Drought Coordinator is responsible for coordinating requests with the Regional Director to ensure that they reflect regional priorities. After reviewing applications from the Regional Director, the Reclamation Drought Coordinator will forward requests for Title I assistance to the Regional Drought Coordinator using the request form (appendix C). The Regional Drought Coordinator is responsible for receiving requests for assistance from the Reclamation Drought Coordinator or the Area Office, assisting customer development of requests to ensure basic informational requirements are met (see checklist), and consulting with the Reclamation Drought Coordinator regarding the requests.
- C. **Area Drought Coordinator.** The Area Drought Coordinator is responsible for forwarding initial requests for assistance to the Regional Drought Coordinator, assisting customer development of requests to ensure basic informational requirements are met

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(see checklist), consulting with the Reclamation and Regional Drought Coordinators regarding the requests, and implementing actions as approved.

- D. **Regional or Area Office Drought Coordinator.** The Drought Coordinator for either the Regional or Area Office, depending on where the delegation resides, is responsible for ensuring that actions are in compliance with environmental laws prior to approval or implementation; tracking actions once they are implemented; consulting with the Regional Drought Coordinator, as necessary, to resolve problems with implementation; and documenting completion of action.
- E. **Regional or Area Office.** The Reclamation office that implements the approved action must maintain a record of the transactions under this title and preserve those records for purposes of the Administrative Procedures Act and possible future audits. The delegated office will maintain a file that includes all correspondence and agreements regarding the drought assistance request and documentation that describes Reclamation's purpose in conducting the activity, the specific activity and its duration, and the anticipated benefits of such activity. Copies of supporting documents executed to carry out approved activities of a nonreimbursable nature will be provided to Reclamation's Drought Coordinator, D-5500. The documentation should include, but not be limited to, the following items:
- (1) A copy of the request for assistance.
 - (2) Copies of supplemental materials provided by the regional office staff to the Reclamation Drought Coordinator.
 - (3) A copy of the response letter.
 - (4) A copy of the funds transfer letter, if applicable.
 - (5) Documentation of the NEPA compliance activities.
 - (6) Copies of implementing documents (MOU, contract, etc.).
 - (7) Documentation of completion of approved activities.
 - (8) Documentation of any required legal reviews for statutory legitimacy of any acquisition requirements.