

and Wellton-Mohawk Irrigation and Drainage District for Construction of Works and for Delivery of Water, dated March 4, 1952, including but not limited to the provisions of subdivisions (b) and (c) of Article 22.

(b) When a purchaser has complied fully with the provisions of his contract and with the applicable provisions of law, including the regulations in this subpart, the Commissioner shall issue a deed to the purchaser. The deed shall recite the reservations described in the contract of sale.

[19 FR 431, Jan. 26, 1954]

## PART 404—RECLAMATION RURAL WATER SUPPLY PROGRAM

### Subpart A—Overview

Sec.

- 404.1 What is the purpose of this part?
- 404.2 What terms are used in this part?
- 404.3 What is the Reclamation Rural Water Supply Program?
- 404.4 What are the goals of the program?
- 404.5 Who is responsible for implementing this rule?
- 404.6 Who is eligible to participate in the program?
- 404.7 What types of projects are eligible for consideration under the program?
- 404.8 Are there any exceptions that would allow a community with greater than 50,000 inhabitants to be part of an eligible rural water supply project?
- 404.9 What types of infrastructure and facilities may be included in an eligible rural water supply project?
- 404.10 Are there certain types of infrastructure and facilities that may not be included in a rural water supply project?
- 404.11 What type of assistance is available under the program?
- 404.12 Can Reclamation provide assistance with the construction of a rural water supply project under this program?
- 404.13 What criteria will Reclamation use to prioritize requests for assistance under the program?
- 404.14 How will Reclamation provide notice of opportunities for assistance under the program?
- 404.15 How can I request assistance under the program?
- 404.16 What information must I include in my statement of interest?
- 404.17 How will Reclamation evaluate my statement of interest?
- 404.18 How can I request assistance to conduct a feasibility study?

- 404.19 What requirements must be met before I can request assistance to conduct a feasibility study?
- 404.20 What information must I include in my full proposal to conduct an appraisal or a feasibility study?
- 404.21 What is Reclamation's role in preparing the full proposal?
- 404.22 How will Reclamation evaluate my full proposal?
- 404.23 How will Reclamation determine whether you or your contractor is qualified to conduct an appraisal investigation or a feasibility study?
- 404.24 How will Reclamation determine whether it is cost-effective for me or my contractor to conduct the appraisal investigation or feasibility study?
- 404.25 How can I request Reclamation to review an appraisal investigation or feasibility study that was not completed under this program?
- 404.26 Must an appraisal investigation be completed before I can request Reclamation to review a feasibility study that was not completed under this program?
- 404.27 How will Reclamation evaluate my request to review an appraisal investigation or feasibility study completed without the support of Reclamation?
- 404.28 Is it possible to expedite the completion of an appraisal investigation or feasibility study?
- 404.29 Can the level of effort needed to complete an appraisal investigation or feasibility study be scaled to be proportional to the size and cost of the proposed project?

### Subpart B—Cost-Sharing

- 404.30 How much Federal funding can Reclamation provide for the completion of an appraisal investigation?
- 404.31 What forms of non-Federal cost-share payment are acceptable?
- 404.32 Can Reclamation reduce the non-Federal cost-share required for an appraisal investigation?
- 404.33 How much Federal funding can Reclamation provide for the completion of a feasibility study?
- 404.34 Can Reclamation reduce the amount of non-Federal cost-share required for a feasibility study?
- 404.35 Is there a different non-Federal cost-share requirement for feasibility studies that involve a community greater than 50,000 inhabitants?
- 404.36 Will Reclamation reimburse me for the cost of an appraisal investigation or a feasibility study that was not completed under §404.11(a) or (b)?
- 404.37 How will Reclamation determine the appropriate non-Federal share of construction costs?

## Bureau of Reclamation, Interior

## § 404.2

- 404.38 Are there different requirements for determining the appropriate non-Federal share of construction costs to be paid by Indian tribes?
- 404.39 What factors will Reclamation consider in evaluating my capability to pay 25 percent or more of the construction costs?
- 404.40 What is the non-Federal share of operation, maintenance, and replacement costs?
- 404.57 Does this rule have any effect on state water law?
- 404.58 Do rural water projects authorized before the enactment of the Rural Water Supply Act of 2006 have to comply with the requirements in this rule?
- 404.59 If the Secretary recommends a project for construction, is that a promise of Federal funding?
- 404.60 Does this rule contain an information collection that requires approval by the Office of Management and Budget (OMB)?

### Subpart C—Appraisal Investigations

- 404.41 How will an appraisal investigation be conducted under this program?
- 404.42 How much time is provided to complete an appraisal investigation?
- 404.43 What process will Reclamation follow to determine if an appraisal investigation is ready for review?
- 404.44 What criteria will Reclamation apply to determine whether it is appropriate to recommend that a feasibility study be conducted?
- 404.45 What will be included in the appraisal report prepared by Reclamation?
- 404.46 Who will the appraisal report be provided to?

### Subpart D—Feasibility Studies

- 404.47 How will a feasibility study be conducted under this program?
- 404.48 What process will Reclamation follow to determine if a feasibility study is ready for review?
- 404.49 What criteria will Reclamation use to determine whether to recommend that a proposed rural water supply project be authorized for construction?
- 404.50 What information will be included in the feasibility report prepared by Reclamation?
- 404.51 Are proposed projects under the Rural Water Supply Program reviewed by the Administration?
- 404.52 Who will the feasibility report be provided to?

### Subpart E—Miscellaneous

- 404.53 Does this rule provide authority for the transfer of pre-existing facilities from Federal to private ownership, or from private to Federal ownership?
- 404.54 Who will hold title to a rural water project that is constructed following the completion of an appraisal investigation or feasibility study under this program?
- 404.55 Who is responsible for the operation, maintenance, and replacement costs?
- 404.56 If a financial assistance agreement is entered into for a rural water supply project that benefits more than one Indian tribe, is the approval of each Indian tribe required?

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### Subpart A—Overview

#### § 404.1 What is the purpose of this part?

The purpose of this part is to explain how the Reclamation Rural Water Supply Program is implemented. This part describes:

- (a) The purpose and priorities of the program;
- (b) How to apply for assistance under the program;
- (c) How Reclamation will evaluate requests for assistance;
- (d) How Reclamation will evaluate an appraisal investigation; and
- (e) How Reclamation will evaluate a feasibility study.

#### § 404.2 What terms are used in this part?

The following terms are used in this part:

*Appraisal investigation* means an analysis of domestic, municipal, and industrial water supply problems, needs, and opportunities in the planning area, primarily using existing data. An appraisal investigation includes a preliminary assessment of alternatives to address the identified water supply problems and needs. The purpose of an appraisal investigation is to determine if there is at least one viable alternative that warrants a more detailed investigation through a feasibility study.

*Appraisal report* means the document, prepared by Reclamation, setting forth the findings and conclusions reached by Reclamation in its evaluation of a completed appraisal investigation. The

## § 404.2

## 43 CFR, Subtitle B, Ch. I (10–1–17 Edition)

purpose of the appraisal report is for Reclamation to provide a recommendation on whether a feasibility study should be initiated.

*Assistance* means the transfer of a thing of value to a non-Federal project sponsor to carry out a public purpose of support or stimulation authorized by law. For purposes of this rule, assistance consists of funds provided by Reclamation through an assistance agreement (grant or cooperative agreement) and technical assistance performed by Reclamation, for the purpose of conducting an appraisal investigation or a feasibility study.

*Commissioner* means the Commissioner of the Bureau of Reclamation.

*Feasibility report* means the document, prepared by Reclamation, setting forth the findings and conclusions of a completed feasibility study. The purpose of the feasibility report is to provide an Administration recommendation to Congress regarding whether the proposed rural water supply project should be authorized for construction.

*Feasibility study* means a detailed investigation requiring the acquisition of primary data, and an analysis of a reasonable range of alternatives, including a preferred alternative, to meet identified water supply problems, needs, and opportunities in the planning area. A feasibility study also includes an analysis of the technical and economic feasibility of the proposed project, the impact of the proposed project on the environment in compliance with the National Environmental Policy Act and other applicable environmental laws, and the financial capability of the non-Federal project sponsor to pay the non-Federal costs associated with constructing, operating, and maintaining the rural water supply project. The completed feasibility study will form the basis for the recommendation to Congress in the feasibility report regarding whether the proposed rural water supply project should be authorized for construction.

*Incidental noncommercial livestock watering* means the supply of water to pasture taps for the purpose of watering livestock, and other livestock watering uses that are incidental to the purpose of the project.

*Indian* means a person who is a member of an Indian tribe.

*Indian tribe* means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Noncommercial irrigation of vegetation* means the supply of water to irrigate lawns, trees, small gardens, and similar vegetation of less than 1 acre.

*Non-Federal project sponsor* means a non-Federal project entity or entities meeting the eligibility criteria in §404.6. A non-Federal project sponsor is also referred to as project sponsor, project sponsors, I, me, my, you, or your in this part.

*Program* means the Reclamation Rural Water Supply Program that is described in §404.3.

*Reclamation* means the Bureau of Reclamation, U.S. Department of the Interior.

*Reclamation states* means the states and areas referred to in 43 U.S.C. 391, as amended.

*Regional or watershed perspective* means an approach to rural water supply planning directed at meeting the needs of geographically dispersed localities across a region or a watershed that will take advantage of economies of scale and foster opportunities for partnerships. This approach also takes into account the interconnectedness of water and land resources, encourages the active participation of all interested groups, and uses the full spectrum of technical disciplines in activities and decision-making.

*Rural Water Supply Project*, or project, means:

(a) A project that is designed to serve a community or groups of communities, each of which has a current population of not more than 50,000 inhabitants, which may include Indian tribes and tribal organizations, dispersed home sites, or rural areas with domestic, municipal, and industrial water, including incidental noncommercial

## Bureau of Reclamation, Interior

## § 404.4

livestock watering and noncommercial irrigation of vegetation.

(b) A rural water supply project may include the following, or any combination of the following:

(1) The construction or installation of new rural water supply infrastructure and facilities;

(2) The improvement or upgrade of existing rural water supply infrastructure and facilities;

(3) The extension of existing rural water supply infrastructure and facilities to reach an increased service area; and

(4) The inter-connection of existing rural water supply infrastructure and facilities currently serving individual communities, dispersed homesites, rural areas, or tribes.

*Secretary* means the Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation.

*Tribal organization* means:

(a) The recognized governing body of an Indian tribe; and

(b) Any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body, or democratically elected by the adult members of the Indian community to be served by the organization.

### § 404.3 What is the Reclamation Rural Water Supply Program?

This program addresses domestic, municipal, and industrial water supply needs in rural areas of the Reclamation States. Reclamation's experience, technical expertise, and financial resources assist rural communities to identify their water supply problems and needs, and evaluate options for addressing those needs. Using a regional or watershed perspective, Reclamation assists in planning projects that maximize regional and national benefits. Through this program, Reclamation works in cooperation with non-Federal project sponsors in Reclamation States on a cost-share basis to:

(a) Investigate and identify opportunities to ensure safe and adequate rural water supplies for domestic, municipal, and industrial use in rural areas and small communities, including Indian tribes;

(b) Plan the design and construction of rural water supply projects through

the conduct of appraisal investigations and feasibility studies; and

(c) Oversee, as appropriate, the construction of rural water supply projects that the Secretary recommends to Congress, which are subsequently authorized and funded for construction by Congress.

### § 404.4 What are the goals of the program?

The goals of the program are to:

(a) Assess and address urgent and compelling rural water supply needs that are not currently met by other programs;

(b) Promote and apply a regional or watershed perspective to water resources management in planning rural water supply projects;

(c) Develop solutions to address rural water supply needs that are cost-effective, and that generate national net economic benefits as required under the "Economic Principles and Guidelines for Water and Related Land Resources" (Principles and Guidelines). The Principles and Guidelines, published in 1983 by the Water Resources Council pursuant to the Water Resources Planning Act of 1965 (Pub. L. 89-80) as amended, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The Principles and Guidelines are intended to ensure proper and consistent planning by Federal agencies in the formulation and evaluation of water and related land resources implementation studies. To enforce any edition other than that specified in this section, the material must be available to the public and approved by the Director of the Federal Register. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Also, a copy of this publication may be obtained and inspected at: Bureau of Reclamation, Denver Federal Center, Building 67, Denver, CO 80225, Policy and Program Services, 303-445-2906 where copies are

#### § 404.5

on file, or at the following website: [http://intra.gp.usbr.gov/resource\\_services/planning\\_process/principles\\_guidelines.pdf](http://intra.gp.usbr.gov/resource_services/planning_process/principles_guidelines.pdf).

(d) Encourage partnerships among rural communities, Indian tribes or tribal organizations, states or political subdivisions of a state, water districts and associations, and other eligible entities, to address rural water supply issues; and

(e) Complement other existing programs and authorities that address rural water supply issues, and encourage collaboration between programs where appropriate.

#### § 404.5 Who is responsible for implementing this rule?

Authority to implement and make determinations under this rule has been delegated from the Secretary to the Commissioner. The Commissioner is authorized to implement this program and may re-delegate that authority as needed. Questions regarding the program should be directed to your local Reclamation office.

#### § 404.6 Who is eligible to participate in the program?

Those eligible to participate in the program include:

(a) A state or political subdivision of a state, including a department, agency, municipality, county, or other regional or local authority;

(b) An Indian tribe or tribal organization; or

(c) An entity created under state law that has water management or water delivery authority, including for example, an irrigation or water district, canal company, water users association, rural water association or district, a joint powers authority, or other qualifying entity; and

(d) Any combination of the entities listed above, which collectively are referred to as the non-Federal project sponsor, as defined in § 404.2.

#### § 404.7 What types of projects are eligible for consideration under the program?

To be eligible for consideration under the program, a rural water supply project must:

(a) Meet the definition of a rural water supply project in § 404.2; and

(b) Be located in a Reclamation State, as defined in § 404.2.

#### § 404.8 Are there any exceptions that would allow a community with greater than 50,000 inhabitants to be part of an eligible rural water supply project?

Yes. A town or community with a population in excess of 50,000 inhabitants may participate in or be served by an eligible rural water supply project under this program if Reclamation determines that the town or community is a critical partner whose involvement substantially contributes to the financial viability of the proposed project. Such a community could be expected to bear a greater proportionate share of the planning, design, and construction costs than other project sponsors, consistent with their capability to pay and the benefits they derive from the project.

#### § 404.9 What types of infrastructure and facilities may be included in an eligible rural water supply project?

A rural water supply project may include, but is not limited to, the following types of infrastructure and facilities:

(a) Pumps, pipes, wells, surface water intakes and other diversion, transmission, or distribution systems;

(b) Storage tanks and small impoundments;

(c) Water treatment facilities for potable water supplies, including desalination facilities;

(d) Buildings necessary to house equipment and serve as a center for operations;

(e) Power transmission and related facilities required for the rural water supply project;

(f) Equipment and management tools for water conservation, groundwater recovery, and water reuse and recycling;

(g) Associated features to mitigate adverse environmental consequences of a project; and

(h) Appurtenances.

**Bureau of Reclamation, Interior**

**§ 404.14**

**§ 404.10 Are there certain types of infrastructure and facilities that may not be included in a rural water supply project?**

Yes. A rural water supply project may not include:

- (a) Any infrastructure or facilities that would deliver water for commercial irrigation; and
- (b) The construction of major impoundment structures.

**§ 404.11 What type of assistance is available under the program?**

Under the Reclamation Rural Water Supply Program, you may:

- (a) Request Reclamation to conduct an appraisal investigation or feasibility study for a rural water supply project for you, with your cooperation;
- (b) Request funding through a grant or cooperative agreement to enable you to conduct an appraisal investigation or feasibility study for a rural water supply project yourself, or through a contractor; or
- (c) Request Reclamation to review and approve an appraisal investigation or feasibility study completed without assistance from Reclamation.

**§ 404.12 Can Reclamation provide assistance with the construction of a rural water supply project under this program?**

Reclamation may provide assistance with the construction of a rural water supply project developed under this program if Congress specifically authorizes the project and appropriates funds for construction.

**§ 404.13 What criteria will Reclamation use to prioritize requests for assistance under the program?**

All requests for assistance that meet the eligibility requirements in §§ 404.6 and 404.7 will be evaluated by applying the following prioritization criteria:

- (a) Whether there is an urgent and compelling need for a rural water supply project that would:
  - (1) Address present or future water supply needs; or
  - (2) Promote public health and safety by addressing present and preventing future violations of drinking water standards;
- (b) The extent to which a rural water supply project promotes and applies a

regional or watershed perspective to water resources management as defined in § 404.2;

- (c) The financial need of the project sponsors for assistance with the planning, design, and construction of a rural water supply project, as demonstrated by readily available local and regional economic indicators;
- (d) The extent to which Reclamation is uniquely qualified to plan, design, and build the project;
- (e) Whether a rural water supply project helps meet applicable requirements established by law;
- (f) The extent to which a rural water supply project serves Indian tribes that have nonexistent or inadequate water systems;
- (g) The extent to which a rural water supply project is ineligible for comprehensive funding (sufficient to fully fund planning and construction of the entire project) through other assistance programs;
- (h) The extent to which a rural water supply project is identified as a priority by state, tribal or local governments;
- (i) Whether a rural water supply project incorporates an innovative approach that effectively addresses water supply problems and needs, either by applying new technology or by employing a creative administrative or cooperative solution; and
- (j) Other criteria that Reclamation deems appropriate.

**§ 404.14 How will Reclamation provide notice of opportunities for assistance under the program?**

Notice of opportunities for assistance to conduct an appraisal investigation or a feasibility study under § 404.11(a) or (b) will be posted as a program announcement on the required government-wide Web site for announcement of Federal assistance opportunities. Opportunities for assistance will also be advertised locally by Reclamation regional and area offices. You are encouraged to contact your local Reclamation office to find out about upcoming program announcements and to discuss your interest in the program.

**§ 404.15**

**§ 404.15 How can I request assistance under the program?**

This table summarizes the requirements for requesting assistance under the program. The requirements are described in more detail in the sections that follow.

Type of assistance requested	How to request assistance
1. Request Reclamation to conduct an appraisal investigation.	Submit a statement of interest as described in § 404.16. Reclamation will then advise you whether you are eligible to submit a full proposal.
2. Request funding to conduct an appraisal investigation yourself or through a contractor.	Submit a statement of interest as described in § 404.16. Reclamation will then advise you whether you are eligible to submit a full proposal.
3. Request Reclamation to conduct a feasibility study.	Submit a full proposal as described in § 404.20.
4. Request funding to conduct a feasibility study yourself or through a contractor.	Submit a full proposal as described in § 404.20.
5. Request Reclamation to review and approve an appraisal investigation or a feasibility study completed without Reclamation assistance.	Submit the investigation or study and a cover letter to your local Reclamation office, as described in § 404.25.

**§ 404.16 What information must I include in my statement of interest?**

A statement of interest is a preliminary scope of work that must include sufficient information to address all of the eligibility criteria described in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13, as well as any information required by the program announcement. In general, this may include, but is not limited to:

- (a) Name, organization, and contact information, including the identification of any partners that may be involved in the appraisal investigation;
- (b) Location map and description of the areas to be served by the proposed rural water supply project, including:
  - (1) Geographical scope;
  - (2) Demographics; and
  - (3) Existing rural water supply infrastructure, if any;
- (c) Type of assistance being requested through this program as described in § 404.11;
- (d) A general description of the problems, needs, and opportunities that the appraisal investigation is being formulated to address, supported by data or

documentation where appropriate. The information provided must also address each of the prioritization criteria in § 404.13;

(e) A general description of project alternatives that may be considered in the investigation, including:

- (1) Water supply management alternatives (e.g., types of infrastructure or facilities to deliver new water supplies), if known;
- (2) Water demand management alternatives (e.g., water conservation and other approaches to reduce water consumption), if known; and
- (3) Potential sources of water supply.

(f) A general description of any prior studies on the problems, needs, and water management alternatives at issue; and,

(g) A general description of existing sources of water supply.

**§ 404.17 How will Reclamation evaluate my statement of interest?**

(a) Reclamation will apply the eligibility requirements in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13, to determine whether the proposed rural water supply project is eligible for further consideration through a full proposal;

(b) If the proposed project is not eligible for further consideration, Reclamation will notify you in writing of that outcome; and,

(c) If the proposed project is eligible for further consideration, Reclamation will notify you in writing that you are eligible to develop a full proposal to conduct an appraisal investigation, as described in § 404.20.

**§ 404.18 How can I request assistance to conduct a feasibility study?**

To request assistance to conduct a feasibility study under § 404.11(a) or (b), consistent with Reclamation’s recommendation in an appraisal report, you must submit a full proposal to conduct a feasibility study in response to the program announcement, pursuant to § 404.20. You are not required to submit a statement of interest.

**§ 404.19 What requirements must be met before I can request assistance to conduct a feasibility study?**

All of the following requirements must be met before you can request assistance to conduct a feasibility study:

- (a) An appraisal investigation must be completed, with or without assistance from Reclamation;
- (b) Reclamation must have reviewed any appraisal investigation prepared without its assistance;
- (c) Reclamation must have prepared an appraisal report evaluating the appraisal investigation; and,
- (d) The appraisal report must include a recommendation by Reclamation, if appropriate, that a feasibility study should be conducted, as described in § 404.45.

**§ 404.20 What information must I include in my full proposal to conduct an appraisal or a feasibility study?**

A full proposal to conduct an appraisal investigation or a feasibility study is a detailed scope of work that must include sufficient information to address the eligibility criteria described in §§ 404.6 and 404.7, and the prioritization criteria in § 404.13. In general this may include, but is not limited to:

- (a) The issues to be addressed in the appraisal investigation or feasibility study and a plan for addressing those issues. The information provided must also address each of the prioritization criteria in § 404.13;
- (b) A description of who will conduct the appraisal investigation or feasibility study, which could include you, your contractor, or Reclamation;
- (c) If you propose that either you or your contractor will conduct the appraisal investigation or feasibility study, you must include the information necessary for Reclamation to determine whether you or your contractor are qualified to conduct the investigation or study, and whether having you or your contractor conduct it is a cost-effective alternative, in accordance with the criteria in §§ 404.23 and 404.24;
- (d) A schedule for conducting the work, identifying specific tasks and the duration of each task, and major milestones with dates for each milestone;

- (e) A complete budget for conducting the appraisal investigation or feasibility study, including an itemized tabular summary of known or expected costs and a narrative description of those costs;

- (f) A funding plan that details how the appraisal investigation or feasibility study will be paid for, taking into consideration applicable assistance and non-Federal cost-share requirements; and

- (g) Any other information requested by Reclamation in the program announcement.

**§ 404.21 What is Reclamation's role in preparing the full proposal?**

- (a) If you are requesting Reclamation to prepare an appraisal investigation or feasibility study on your behalf under § 404.11(a), Reclamation will work with you on a collaborative basis to provide the information requested in § 404.20(a), (b), (d), (e) and (f).

- (b) If you are requesting funding through a grant or cooperative agreement under § 404.11(b), Reclamation will be available to provide you with guidance and assistance in preparing your full proposal, upon request.

**§ 404.22 How will Reclamation evaluate my full proposal?**

- (a) Reclamation will evaluate the full proposal to conduct an appraisal or a feasibility study in order to ensure that it meets the requirements in § 404.20 and is, therefore, complete. Reclamation will notify you in writing of the outcome of this determination.

- (b) If it is complete, Reclamation will evaluate your proposal against all other proposals received, using a competitive review process based on an application of the prioritization criteria in § 404.13.

- (c) Full proposals will be selected for award of assistance based on:

- (1) The evaluation process, as described in § 404.22(b); and
- (2) The availability of appropriations; and
- (3) Other criteria that Reclamation deems appropriate.

- (d) Once the proposal evaluation and selection process is complete, you will be notified in writing of the outcome of your request for assistance.



## § 404.23

### **§ 404.23 How will Reclamation determine whether you or your contractor is qualified to conduct an appraisal investigation or a feasibility study?**

If you are requesting funding under § 404.11(b) to conduct an appraisal investigation or a feasibility study yourself or through a contractor, Reclamation will evaluate whether you, your technical staff, or contractor are qualified to perform the appraisal investigation or feasibility study based on their demonstrated qualifications and experience in performing or managing similar activities. Areas of expertise needed may include, but are not limited to, water management planning, engineering, hydrology, biology, demography, finance, and economics.

### **§ 404.24 How will Reclamation determine whether it is cost-effective for me or my contractor to conduct the appraisal investigation or feasibility study?**

Reclamation will take the following steps to determine whether it is cost-effective for you or your contractor to conduct the appraisal investigation or feasibility study:

(a) Reclamation will review and evaluate the reasonableness of your full proposal, including the scope of work, the estimated costs, anticipated work schedule, and products to be delivered;

(b) At its discretion, Reclamation may also choose to prepare an independent government cost estimate to analyze whether it would be more cost-effective for Reclamation to complete the appraisal investigation or feasibility study;

(c) Reclamation will notify you in writing of its determination regarding the cost-effectiveness of your proposal and the basis for its decision.

### **§ 404.25 How can I request Reclamation to review an appraisal investigation or feasibility study that was not completed under this program?**

(a) To request Reclamation to review an appraisal investigation or feasibility study that was not completed under this program as provided under § 404.11(c), you must submit the appraisal investigation or feasibility

## 43 CFR, Subtitle B, Ch. I (10-1-17 Edition)

study to your local Reclamation office with a cover letter requesting Reclamation to review it.

(b) Your cover letter must address the eligibility criteria set forth in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13.

(c) You may make your submittal at any time and are not required to submit a statement of interest in response to the program announcement, as required for requests to conduct an appraisal investigation or feasibility study under § 404.11(a) or (b).

### **§ 404.26 Must an appraisal investigation be completed before I can request Reclamation to review a feasibility study that was not completed under this program?**

In general, Reclamation must review an appraisal investigation and prepare an appraisal report recommending that a feasibility study be conducted before Reclamation can review a feasibility study completed without Reclamation assistance under § 404.11(c). However, Reclamation may review a feasibility study without first reviewing and approving an appraisal investigation, if Reclamation determines that:

(a) No appraisal investigation was prepared for the project;

(b) The feasibility study satisfies the appraisal criteria set forth in § 404.44; and

(c) Reclamation documents these findings in the feasibility report.

### **§ 404.27 How will Reclamation evaluate my request to review an appraisal investigation or feasibility study completed without the support of Reclamation?**

(a) Upon receipt of your submittal, Reclamation will apply the eligibility criteria in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13, to determine whether the appraisal investigation or feasibility study is eligible to be reviewed under the program. Reclamation will notify you in writing of the outcome of this determination.

(b) If the proposed appraisal investigation or feasibility study is eligible for review, Reclamation will evaluate the investigation or study in accordance with the process set forth in § 404.43, for an appraisal investigation, or § 404.48, for a feasibility study.

## Bureau of Reclamation, Interior

## § 404.34

### **§ 404.28 Is it possible to expedite the completion of an appraisal investigation or feasibility study?**

Yes. If Reclamation determines that a community or groups of communities to be served by a proposed rural water supply project has urgent and compelling water needs, Reclamation will, to the maximum extent practicable, expedite appraisal investigations and reports and feasibility studies and reports conducted under this program.

### **§ 404.29 Can the level of effort needed to complete an appraisal investigation or feasibility study be scaled to be proportional to the size and cost of the proposed project?**

Yes. In general, the level of effort for an appraisal investigation or feasibility study should be scaled to take into consideration the total size, cost, and complexity of the proposed rural water supply project in order to reduce the total cost of the investigation or study. However, the effort to scale the appraisal investigation or feasibility study must not diminish the quality of the data, the analysis, or the overall completeness of the investigation or study.

## **Subpart B—Cost-Sharing**

### **§ 404.30 How much Federal funding can Reclamation provide for the completion of an appraisal investigation?**

In general, Reclamation will be responsible for 100 percent of the cost of an appraisal investigation conducted under § 404.11(a) or (b), up to \$200,000. If the cost of the appraisal investigation exceeds \$200,000, your cost-share will be 50 percent of the amount exceeding \$200,000.

### **§ 404.31 What forms of non-Federal cost-share payment are acceptable?**

The non-Federal cost-share for an appraisal investigation or a feasibility study may be provided in the form of money or in-kind services that Reclamation determines are necessary and reasonable for the conduct and completion of the investigation or study. The determination of allowability, allocability, and reasonableness is governed by the Cost Principles of the Of-

fice of Management and Budget, codified at 2 CFR 220, 225, and 230, and in the Federal Acquisitions Regulations, Part 312.

### **§ 404.32 Can Reclamation reduce the non-Federal cost-share required for an appraisal investigation?**

Yes. Reclamation may reduce the non-Federal cost-share for appraisal investigations below 50 percent of the costs exceeding \$200,000, if:

(a) Reclamation determines that there is an overwhelming Federal interest in conducting the appraisal investigation, and you demonstrate financial hardship. Financial hardship will be determined in accordance with Reclamation's official policies, guidance and standards, which are available at your local Reclamation office; and

(b) Reclamation consults with other Federal agencies that are partners in the project and determines that a reduction in the non-Federal cost-share is appropriate.

### **§ 404.33 How much Federal funding can Reclamation provide for the completion of a feasibility study?**

In general, Reclamation will be responsible for 50 percent of the cost of a feasibility study conducted under § 404.11(a) or (b). You will be responsible to pay for the remaining 50 percent of the cost of the study using non-Federal funding.

### **§ 404.34 Can Reclamation reduce the amount of non-Federal cost-share required for a feasibility study?**

Yes. Reclamation may reduce the non-Federal cost-share required for a feasibility study to an amount less than 50 percent of the study costs if:

(a) Reclamation determines that there is an overwhelming Federal interest in conducting the feasibility study, and you demonstrate financial hardship. Financial hardship will be determined in accordance with Reclamation's standards, which are available at your local Reclamation office; and

(b) Reclamation consults with other Federal agencies that are partners in the project and determines that a reduction in the non-Federal cost-share is appropriate.

**§ 404.35**

**43 CFR, Subtitle B, Ch. I (10-1-17 Edition)**

**§ 404.35 Is there a different non-Federal cost-share requirement for feasibility studies that involve a community greater than 50,000 inhabitants?**

Yes. If the feasibility study involves a rural water supply system that will serve a community with a population in excess of 50,000 inhabitants, pursuant to the exception provided in § 404.8, you may be required to pay more than 50 percent of the costs of the study. Determination of the appropriate amount of the non-Federal cost-share will be based on the same criteria used to evaluate your capability to pay the non-Federal share of construction costs, set forth in § 404.39.

**§ 404.36 Will Reclamation reimburse me for the cost of an appraisal investigation or a feasibility study that was not completed under § 404.11(a) or (b)?**

No. The cost-share provisions described in this rule only apply to appraisal investigations and feasibility studies that are completed under the program pursuant to § 404.11(a) or (b). Reclamation will not reimburse you or provide program funding for any expenses related to an appraisal investigation or a feasibility study that is completed without assistance from Reclamation.

**§ 404.37 How will Reclamation determine the appropriate non-Federal share of construction costs?**

Reclamation will determine the appropriate non-Federal share of construction costs in the process of developing the feasibility report. The non-Federal cost-share will be:

(a) At least 25 percent of the total construction costs; and

(b) An additional amount based on your capability to pay, as appropriate, to be determined by Reclamation based on the factors in § 404.39.

**§ 404.38 Are there different requirements for determining the appropriate non-Federal share of construction costs to be paid by Indian tribes?**

Yes. The appropriate non-Federal share of construction costs to be paid by Indian tribes will be based on:

(a) Consideration of an Indian tribe's capability to pay at least 25 percent of the construction costs, to be determined in accordance with the factors in § 404.39; and

(b) If Reclamation determines, based on the analysis in § 404.38(a), that an Indian tribe is not capable of paying at least 25 percent of the construction costs, Reclamation may recommend in its feasibility report that the collection of all or part of the non-Federal construction costs apportioned to an Indian tribe be deferred, unless or until Reclamation determines that the Indian tribe should pay all or a portion of those costs.

**§ 404.39 What factors will Reclamation consider in evaluating my capability to pay 25 percent or more of the construction costs?**

Reclamation will consider the following factors:

(a) Economic factors for the project area, relative to the state average, including:

- (1) Per capita income;
- (2) Median household income; and
- (3) The poverty rate;

(b) The ability of the project sponsor to raise tax revenues or assess fees such as user fees and ad valorem taxes or issue bonds;

(c) The strength of the project sponsor financial statements in comparison to other similar entities over the previous 4 years, including a review of:

- (1) Current (includes cash and inventory) and non-current assets (property, plants etc.);
- (2) Net Assets (total assets minus total liabilities);
- (3) Changes to net assets;
- (4) Operating revenues (water and power sales);
- (5) Operating expenses (variable costs and depreciation, maintenance and repair);
- (6) Cash flow from operating activities (positive value from water sales minus payments to supplies and employees);
- (7) Current (current bonds payable and accounts payable) and non-current liabilities (long term debt payable);
- (8) Outstanding debts and all other financial obligations;
- (9) Collateral/equity as appropriate;

## Bureau of Reclamation, Interior

## § 404.43

(10) Cash flows from capital and related financing activities (negative value from principle paid on bonds and interest payments);

(11) Net cash flow; and

(12) Any non-operating revenues and expenses;

(d) Funding commitments from non-Federal sources, other than the non-Federal project sponsor, including resources committed by state, county, or local governments;

(e) The existing cost of water and the cost to develop new water supplies in the region; and

(f) The impact of the proposed project on water rates;

(g) The projected impact of the proposed project on the non-Federal project sponsor's ability to raise or generate revenues;

(h) The non-Federal project sponsor's financial history including their past performance on repaying loans and other debts; and

(i) Any other financial means of the non-Federal project sponsor that is not captured in this subsection.

### § 404.40 What is the non-Federal share of operation, maintenance, and replacement costs?

You are required to pay 100 percent of the operation, maintenance, and replacement costs of any rural water supply project planned under this program.

## Subpart C—Appraisal Investigations

### § 404.41 How will an appraisal investigation be conducted under this program?

Appraisal investigations will be conducted in accordance with Reclamation-approved standards governing the approach, process and content of the appraisal investigation. You can obtain information about Reclamation's standards and requirements for conducting an appraisal investigation by contacting your local Reclamation office.

### § 404.42 How much time is provided to complete an appraisal investigation?

An appraisal investigation must be scheduled for completion not later than 2 years after the date on which the appraisal investigation is initiated, unless otherwise agreed to in writing by Reclamation.

### § 404.43 What process will Reclamation follow to determine if an appraisal investigation is ready for review?

(a) Reclamation will evaluate whether the appraisal investigation adequately addresses all of the items required in Reclamation's standards for conducting appraisal investigations, and is, therefore ready for review. Reclamation standards and requirements for the content of an appraisal investigation are available at your local Reclamation office. Reclamation will notify you in writing of the outcome of this determination within 90 business days from the date of Reclamation's receipt of the appraisal investigation;

(b) If the appraisal investigation does not include the required information, you will be notified in writing of the reasons why, and you will have an opportunity to make changes and re-submit the corrected appraisal investigation to Reclamation for additional review. As appropriate, Reclamation will work with you to suggest approaches to correct the appraisal investigation;

(c) Once Reclamation determines that the appraisal investigation includes all of the required information, Reclamation will review the investigation to determine, based on an application of the criteria set forth in § 404.44, whether or not it is appropriate to proceed to a feasibility study. Reclamation will document its findings in an appraisal report, as described in § 404.45;

(d) Reclamation's review of an appraisal investigation will take no longer than 180 business days from its receipt of the appraisal investigation to its completion of the appraisal report, excluding time when Reclamation is waiting for additional information from the project sponsor.

## § 404.44

### **§ 404.44 What criteria will Reclamation apply to determine whether it is appropriate to recommend that a feasibility study be conducted?**

In reviewing an appraisal investigation, Reclamation will apply the following criteria to determine whether at least one of the alternatives identified is appropriate for further analysis through a feasibility study, or whether the investigation should be terminated without conducting a feasibility study, including:

(a) Whether a reasonable range of alternatives (structural or non-structural) have been formulated and evaluated;

(b) Whether the recommendation for further study of one or more alternatives is clearly supported by the analysis in the appraisal investigation; and

(c) For each alternative considered in the investigation, whether the alternative:

(1) Identifies viable water supplies and water rights sufficient to supply the proposed service area, including all practicable water sources such as lower quality waters, non-potable waters, and water-reuse-based water supplies;

(2) Has a positive effect on public and health and safety;

(3) Will meet water demand, including projected future needs;

(4) Provides environmental benefits, including source water protection;

(5) Applies a regional or watershed perspective and promotes benefits in the region in which the project is carried out;

(6) Implements an integrated water resources management approach;

(7) Enhances water management flexibility, including providing for local control of water supplies and, where applicable, encouraging participation in water banking and markets;

(8) Promotes long-term protection of water supplies;

(9) Includes preliminary cost estimates that are reasonable and supported;

(10) Is cost-effective and generates national net economic benefits as required under the Principles and Guidelines (incorporated by reference at § 404.4);

## 43 CFR, Subtitle B, Ch. I (10–1–17 Edition)

(11) For each alternative proposed for further evaluation in a feasibility study, whether the project sponsor has the capability to pay 100 percent of the costs associated with the operation, maintenance, and replacement of the facilities constructed or developed; and

(12) Other factors that Reclamation deems appropriate.

### **§ 404.45 What will be included in the appraisal report prepared by Reclamation?**

The appraisal report prepared by Reclamation will include Reclamation's finding as to whether or not it is appropriate to proceed to a feasibility study, based on Reclamation's review of the appraisal investigation and application of the criteria set forth in § 404.44, and the reasons supporting that finding.

### **§ 404.46 Who will the appraisal report be provided to?**

A copy of the appraisal report will be provided to you. Reclamation will also publish a notice of availability of the appraisal report in the FEDERAL REGISTER and will make a copy of the report available to the public upon request.

## **Subpart D—Feasibility Studies**

### **§ 404.47 How will a feasibility study be conducted under this program?**

Feasibility studies will be conducted in accordance with Reclamation's standards governing the approach, process and content of the feasibility study, including the Principles and Guidelines (incorporated by reference at § 404.4). You can obtain information about Reclamation's standards and requirements for conducting feasibility studies by contacting your local Reclamation office.

### **§ 404.48 What process will Reclamation follow to determine if a feasibility study is ready for review?**

(a) Reclamation will evaluate whether the feasibility study adequately addresses all of the items required in Reclamation's standards for conducting a feasibility study, and is, therefore, ready for review. Reclamation standards and requirements for the content

of a feasibility study are available at your local Reclamation office. Reclamation will notify you in writing of the outcome of this determination within 90 business days from the date of Reclamation's receipt of the feasibility study;

(b) If the feasibility study does not include the required information, you will be notified in writing of the reasons why, and you will have an opportunity to make changes and re-submit the corrected feasibility study to Reclamation for additional review. Where appropriate, Reclamation will work with you to suggest approaches to correct the feasibility study;

(c) Once Reclamation determines that the feasibility study includes all of the required information, Reclamation will review the study to determine, based on application of the criteria set forth in § 404.49, whether or not it is appropriate to recommend to Congress that it authorize construction of the project;

(d) Reclamation's review of the feasibility study will take no longer than 180 business days from the date that Reclamation determines that the study includes all of the required information and is ready for review; and

(e) Reclamation will document its findings in a feasibility report, as more fully described in section § 404.50.

**§ 404.49 What criteria will Reclamation use to determine whether to recommend that a proposed rural water supply project be authorized for construction?**

In reviewing a feasibility study, Reclamation will assure that the proposed project is consistent with the policies and programs of the President and will apply the following criteria to evaluate and determine whether it is appropriate to recommend authorization for construction:

(a) The degree to which the project meets the prioritization criteria in § 404.13;

(b) The outcome of the environmental analysis;

(c) Whether there is a Federal interest in the project, including:

(1) A clearly defined Federal nexus to a proposed project;

(2) The Federal cost of the project in relation to the amount of Federal resources likely to be available; and

(d) Whether the recommended project alternative is clearly supported by the feasibility study, based on application of the following factors, including the extent to which the alternative:

(1) Addresses near and long-term water demand;

(2) Advances public health and safety and consideration of other benefits of the proposed rural water supply project;

(3) Addresses environmental quality and source water protection issues;

(4) Addresses opportunities to treat and use low-quality or non-potable water, water-reuse based supplies, and brackish and saline waters, through innovative and economically viable treatment technologies;

(5) Addresses opportunities for water conservation through structural or non-structural approaches and demonstration technologies to reduce water use and water system costs;

(6) Addresses opportunities to take advantage of economic incentives and the use of market-based mechanisms;

(7) Includes a reasonable and supported estimate of construction costs and operation, maintenance, and replacement costs;

(8) Is consistent with the Principles and Guidelines (incorporated by reference at § 404.4).

(9) Includes a reasonable and supported operation, maintenance, and replacement plan to assist the project sponsor in establishing rates and fees and a schedule identifying how those costs should be allocated to each non-Federal project sponsor;

(10) Demonstrates your financial capability to pay at least 25 percent of the design and construction costs and 100 percent of the operation, maintenance, and replacement costs;

(11) Is eligible for guaranteed loans;

(12) Includes adequate administrative and financial controls to manage construction and operation, maintenance, and replacement of the project;

(13) Is eligible for assistance under other Federal authorities to pay for discrete features or portions of the project;

#### § 404.50

(14) Is technically feasible and can be constructed within industry standards;

(15) Involves partnerships with other state, local, or tribal governments or Federal entities; and

(16) In the case of Indian tribes and tribal organizations, the extent to which the alternative addresses the goal of economic self-sufficiency;

(17) The degree to which the proposed project demonstrates that it has clear deliverables, will be accomplished within a reasonable schedule, within budget, and is well managed; and

(18) Other factors and criteria that Reclamation deems appropriate.

#### § 404.50 What information will be included in the feasibility report prepared by Reclamation.

The feasibility report prepared by Reclamation will include:

(a) Reclamation's finding as to whether the proposed rural water supply project is feasible and the reasons supporting that determination;

(b) A recommendation to Congress regarding whether or not the proposed rural water supply project should be authorized for construction, and the reasons supporting the recommendation. This recommendation will be based on Reclamation's review of the feasibility study and its application of the criteria set forth in § 404.49; and

(c) If the rural water supply project is recommended for construction, the feasibility report will also include:

(1) The appropriate Federal and non-Federal share of the capital construction costs for the project and for projects involving multiple project sponsors, the portion of those costs allocated to each project sponsor;

(2) What amount of grants, loan guarantees, or combination of grants and loan guarantees should constitute the Federal share of the project;

(3) The annual operation, maintenance, and replacement costs, and the portion of those costs allocated to each project sponsor participating in the rural water supply project; and

(4) An assessment of the financial capability of each project sponsor participating in the rural water supply project to pay the portion of the construction and operation, maintenance, and replacement costs allocated to it.

#### 43 CFR, Subtitle B, Ch. I (10-1-17 Edition)

#### § 404.51 Are proposed projects under the Rural Water Supply Program reviewed by the Administration?

Yes. The Administration will review all projects proposed for funding under the Reclamation's Rural Water Supply Program. This includes review under Executive Order 12322 to determine whether the project is consistent with the policies and programs of the President. This review will occur before the feasibility report is finalized.

#### § 404.52 Who will the feasibility report be provided to?

Upon its completion, Reclamation will:

(a) Provide the feasibility report to you;

(b) Submit the feasibility report to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives;

(c) Make the report publicly available, along with associated study documents; and

(d) Publish in the FEDERAL REGISTER a notice of the availability of the results.

#### Subpart E—Miscellaneous

#### § 404.53 Does this rule provide authority for the transfer of pre-existing facilities from Federal to private ownership, or from private to Federal ownership?

No. This rule does not authorize the transfer of pre-existing facilities or pre-existing components of any water system from Federal to private ownership, or from private to Federal ownership.

#### § 404.54 Who will hold title to a rural water project that is constructed following the completion of an appraisal investigation or feasibility study under this program?

Title to any rural water project planned, designed and recommended for construction under this program will be held by the non-Federal project sponsor.

## Bureau of Reclamation, Interior

## §413.2

### §404.55 Who is responsible for the operation, maintenance, and replacement costs?

You will be responsible for 100 percent of the operation, maintenance, and replacement costs for any rural water facility that is planned, designed, and recommended for construction under this program.

### §404.56 If a financial assistance agreement is entered into for a rural water supply project that benefits more than one Indian tribe, is the approval of each Indian tribe required?

Yes. When a financial assistance agreement is entered into with an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe is a prerequisite to entering into the financial assistance agreement.

### §404.57 Does this rule have any effect on state water law?

No. Neither the Act nor this rule preempts or affects state water law or any interstate compact governing water. Reclamation will comply with state water laws in carrying out this rule.

### §404.58 Do rural water projects authorized before the enactment of the Rural Water Supply Act of 2006 have to comply with the requirements in this rule?

No. Neither the Act nor this rule imposes any additional requirements on rural water supply projects that were authorized for construction before the date of enactment of the Act.

### §404.59 If the Secretary recommends a project for construction, is that a promise of Federal funding?

No. Congress must first authorize the project for construction and Federal funding is subject to the availability of appropriations.

### §404.60 Does this rule contain an information collection that requires approval by the Office of Management and Budget (OMB)?

Yes. This rule does contain an information collection that is approved by OMB, under Control Number 1006-0029. The Paperwork Reduction Act provides that an agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

## PART 413—ASSESSMENT BY IRRIGATION DISTRICTS OF LANDS OWNED BY THE UNITED STATES, COLUMBIA BASIN PROJECT, WASHINGTON

### Sec.

413.1 Purpose.

413.2 Definitions.

413.3 Assessment of settlement lands.

413.4 Assessment of other project act lands and rights of way.

413.5 Reports on status of settlement lands.

AUTHORITY: Sec. 8, 57 Stat. 20; 16 U.S.C. 835c-4.

SOURCE: 23 FR 10360, Dec. 25, 1958, unless otherwise noted.

### §413.1 Purpose.

The provisions of this part shall govern the levy and enforcement of assessments by or on behalf of irrigation districts against lands owned by the United States within the Columbia Basin Project, pursuant to the provisions of subsection 5 (b) and section 8 of the Columbia Basin Project Act (57 Stat. 14; 16 U. S. C. 835c-1 and 835c-4) and in keeping with the provisions of section 14, Chapter 275, Laws of Washington, 1943. (Section 89.12.120, Revised Code of Washington).

### §413.2 Definitions.

As used in this part:

(a) *Project Manager* means the Project Manager of the Columbia Basin Project, a Federal reclamation project.

(b) *District* means any one of the irrigation districts organized under the laws of Washington which has contracted with the United States under the Columbia Basin Project Act to repay a portion of the construction cost of the project.

(c) *Settlement lands* means those public lands of the United States within the project or those lands acquired by the United States under the authority of the Columbia Basin Project Act, title to which is vested in the United States and which are being held pending their conveyance in accordance