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Reclamation Law and the Allocation of Construction Costs for Federal Water Projects

Statement of Victor S. Rezendes, Director,
Energy, Resources, and Science Issues,
Resources, Community, and Economic
Development Division



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the Bureau of Reclamation's financing of federal water projects. Since 1902, the federal government has been involved in financing and building water projects, primarily to reclaim arid and semiarid land in the West. Initially, these projects were generally small and built almost solely to provide irrigation. Over the years, however, new projects have grown in size and purpose to include providing for municipal and industrial water supply, hydroelectric power generation, recreation, flood control, and other benefits in addition to irrigation. The Department of the Interior's Bureau of Reclamation and the U.S. Army Corps of Engineers build most federal water projects. While the Corps operates nationwide, the Bureau conducts its activities only in 17 western states.

Over the years, in response to issues raised by this Subcommittee and other congressional committees, we have reported on several aspects of water resource management within the Bureau of Reclamation. My testimony today is based primarily on the findings of three of these reports¹ and focuses on (1) the evolution of reclamation law² primarily from 1902 to 1982 and (2) the allocation and repayment of construction costs for federal water projects among the projects' beneficiaries.

Reclamation Law From 1902 to 1982

The Reclamation Act of 1902 established the Reclamation Fund and provided for the construction of single-purpose irrigation projects in the West. These projects were built primarily to meet the nation's objective at that time of "developing the West." Since then, reclamation law has been significantly amended and supplemented.

Initially, the federal water project construction program was to be self-sufficient. Although debate occurred on how a reclamation program should be financed, when the Congress passed the Reclamation Act of 1902, it clearly intended that the projects' costs should be repaid by the irrigators using the water delivered by the projects. No appropriated funds were to be used to build these water projects. Under the 1902 act, projects were to be funded through a revolving fund initially capitalized by revenue

¹Bureau of Reclamation: Information on Allocation and Repayment of Costs of Constructing Water Projects ([GAO/RCED-96-109](#), July 3, 1996), Water Subsidies: Basic Changes Needed to Avoid Abuse of the 960-Acre Limit ([GAO/RCED-90-6](#), Oct. 12, 1989), and Reforming Interest Provisions in Federal Water Laws Could Save Millions (CED-82-3, Oct. 22, 1981).

²Collectively, the federal statutes that are generally applicable to all reclamation water projects and the statutes authorizing individual projects are known as reclamation law.

generated from the sale of public lands. Upon the completion of a project, irrigators were to repay the revolving fund for the costs of constructing the project within 10 years. However, from the beginning, irrigators were not required to pay interest on their repayment obligation. The act's legislative history states that ". . . the Government, interested only in the settlement of the lands, can well forego any interest on investments and be content with the return of the principal."

Early on, it was discovered that the costs of establishing irrigated farming on previously unfarmed, arid land were much higher than expected and the costs of building water projects were much higher than originally estimated. As a result, major funding and repayment changes were made to the reclamation program between 1902 and 1939. For example, in 1906, the Congress authorized the sale of surplus power from water projects to towns and the crediting of the sale revenues to the repayment of irrigation costs. In 1910, the Congress directed the U.S. Treasury to loan up to \$20 million to the fund to finance completion of the construction of water projects. Then, in 1914, to ease irrigators' financial difficulties, the Congress enacted the Reclamation Extension Act, which extended the repayment period from 10 to 20 years. Although the irrigators were having difficulty meeting their repayment obligations, the principle that they should repay the costs of construction continued. In 1926, the Congress enacted the Omnibus Adjustment Act, which further extended the repayment period for all water projects from 20 to 40 years and relieved some irrigators of parts of their repayment obligations because of nonproductive lands in certain projects. Repayment for irrigators remained interest-free.

In 1939, the Congress fundamentally changed the nature of the program by enacting the Reclamation Project Act of 1939. Under this act, projects could be authorized for multiple purposes, and the construction costs would be allocated among the projects' various purposes: irrigation, municipal and industrial water supply, hydroelectric power generation, flood control, and navigation. The legislation allowed the costs of these multipurpose projects to be shared among the various beneficiaries so that the projects, including those that provided irrigation, would be economically viable. The act provided that construction costs allocated to municipal and industrial water supply and power could be repaid with interest. The act also gave irrigators additional relief in fulfilling their repayment obligations by allowing for variable annual payments based on crop returns and providing for an interest-free development period of up

to 10 years before starting to require repayment. Since 1939, appropriated funds have been used to construct most reclamation projects.

With the passage of the Reclamation Reform Act of 1982, the Congress increased the number of acres that an individual or legal entity, such as a partnership or corporation, could irrigate with water from federal projects from 160 acres to 960 owned or leased acres. However, owned land above this limit could not be irrigated with federal water, and the act required irrigators to pay the “full cost” for water delivered to leased land over the limit. The concept of full-cost pricing represented a significant departure from prior reclamation law. The full-cost rate is an annual rate intended to repay over time the portion of the federal government’s expenditures for project construction allocated to irrigation, including the operation and maintenance expenses, with interest.

In addition to legislation that is generally applicable to all federal water projects, the Congress has also enacted specific authorizing legislation dictating a water project’s purposes, cost reimbursement terms, and repayment period. For example, section 2 of the Tualatin Project Act of 1966³ authorizes a 50-year period for the repayment of the portion of a project’s construction costs allocated to irrigation and municipal and industrial water supply.

Although these legislative provisions include changes in the requirements for repaying costs, they still support the overall principle that the federal costs incurred in constructing a water project for the purposes of irrigation, municipal and industrial water supply, and power should be repaid to the federal government. Appendix I lists some of the significant legislation enacted since 1902 affecting the reclamation project construction program.

Allocation of Projects’ Costs and Repayment Requirements

Reclamation law determines how the costs of constructing reclamation projects are allocated and how repayment responsibilities are assigned among the projects’ beneficiaries. In implementing reclamation law, the Bureau is guided by its implementing regulations, administrative decisions of the Secretary of the Interior, and applicable court cases.

Under reclamation law, a project’s construction costs are divided into two categories—reimbursable and nonreimbursable costs. Reimbursable costs are those that are repaid by the project’s beneficiaries. The costs allocated

³P. L. 89-596, 80 Stat. 822.

to irrigation, municipal and industrial water use, and power generation are reimbursable. Nonreimbursable costs are those that are borne by the federal government because certain purposes of the project are viewed as national in scope. These costs include those allocated to flood control and navigation, as well as the majority of the costs allocated to fish and wildlife enhancement, highway transportation, and recreation. For example, the \$108 million Weber Basin project in Utah includes \$18.9 million in nonreimbursable costs allocated to flood control, recreation, fish and wildlife enhancement, highway transportation, and the safety of dams.

The amount of reimbursable costs that a water user is responsible for repaying varies by the type of user. Irrigators are responsible for repaying their allocated share of a project's construction costs as limited by a determination of their ability to pay.⁴ They are not required to repay the interest that accrues during construction or during the repayment period. Municipal and industrial water users and power users are responsible for repaying their allocated share of the construction costs plus the interest that accrues during the repayment period. They can also be required to repay the construction costs that are determined to be above the irrigators' ability to pay; however, they pay no interest on these shifted costs. Appendix II shows how costs are typically allocated for repayment among a project's water users.

As of September 30, 1994,⁵ the federal government had spent \$21.8 billion to construct 133 water projects that included irrigation as a purpose. The Bureau has determined that the federal government should be reimbursed for \$16.9 billion, or about 77 percent, of the \$21.8 billion. Of these reimbursable costs, the largest repayment obligation—\$7.1 billion—was allocated to irrigation. The Bureau has also determined that under reclamation law, \$5 billion, or about 23 percent, of the water projects' total construction costs is nonreimbursable. The largest share of these nonreimbursable costs, about \$1.1 billion, was allocated to flood control. We did not determine how much of the \$16.9 billion of reimbursable costs

⁴Since 1906, reclamation law has authorized the use of power revenues to assist in the repayment of irrigation costs. A 1944 opinion from the Department of the Interior's Office of the Solicitor, interpreting the provisions of the 1939 act, confirmed the principle of limiting the financial obligation of irrigators to their ability to pay their share of a project's construction costs. Costs determined to be beyond the irrigators' ability to pay could be repaid from other revenue sources, primarily from revenues earned from the sale of electrical power generated by the projects. Payments made from other sources under this interpretation of the law became known as irrigation assistance.

⁵When we issued our 1996 report, these were the most current data available in the Bureau's financial reports for the 133 projects.

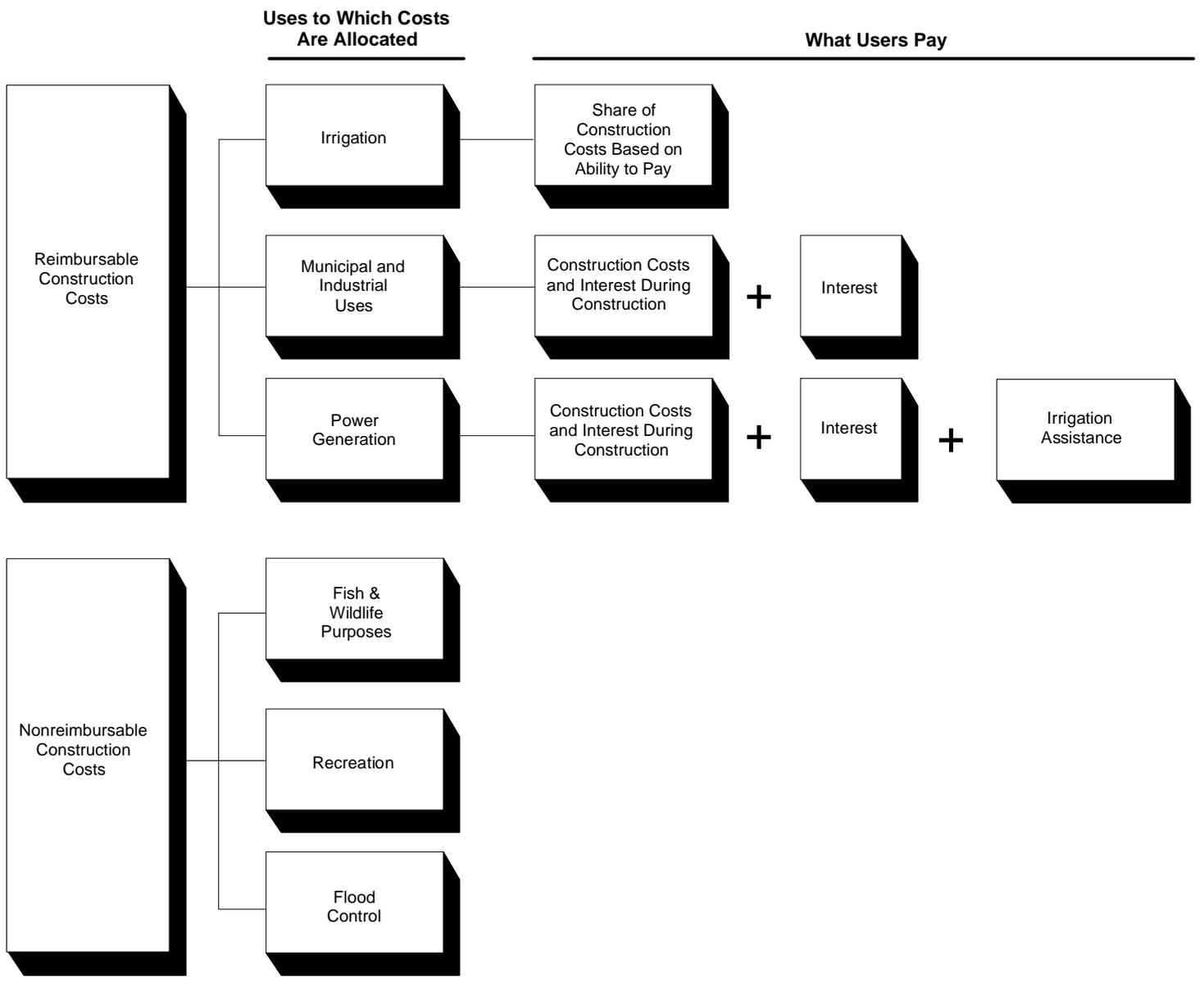
has been repaid. Appendix III shows how the \$21.8 billion is allocated among specific project purposes.

This concludes my statement, Mr. Chairman. I would be happy to respond to any questions that you or other Members of the Subcommittee may have.

Some Significant Changes in Reclamation Law Regarding the Allocation of Project Costs and Their Repayment

Statute	Change
Reclamation Act of 1902 (32 Stat. 388)	<ul style="list-style-type: none"> •Irrigation projects are authorized. •Construction is funded via a revolving fund. •Repayment of costs takes place over 10 years. •Repayment is interest-free.
Town Sites and Power Development Act of 1906 (34 Stat. 116)	<ul style="list-style-type: none"> •Establishment of towns and provision of water are authorized. • Projects' surplus power can be sold to towns and the revenues credited to repayment of irrigation costs.
Advances to the Reclamation Fund Act of 1910 (36 Stat. 835)	<ul style="list-style-type: none"> •U.S. Treasury is directed to loan up to \$20 million to the fund to finance completion of water projects' construction.
Reclamation Extension Act of 1914 (38 Stat. 686)	<ul style="list-style-type: none"> •Repayment period is extended from 10 to 20 years.
Fact Finders' Act of 1924 (43 Stat. 672)	<ul style="list-style-type: none"> •Repayment requirements are amended to 5 percent per year of irrigators' average crop value for the preceding 10 years. •Use of project revenues from nonirrigation activities, such as power sales and surplus water sales, is authorized for repayment of irrigators' construction costs and payment of operation and maintenance costs.
Omnibus Adjustment Act of 1926 (44 Stat. 636)	<ul style="list-style-type: none"> •Repayment period is extended from 20 to 40 years. •Irrigators are relieved of parts of their repayment obligations because of nonproductive land at specified projects.
Five Million Dollar Advance to the Reclamation Fund Act of 1931 (46 Stat. 1507)	<ul style="list-style-type: none"> •U.S. Treasury is directed to loan up to \$5 million to the fund to finance completion of water projects' construction.
Reclamation Project Act of 1939 (53 Stat. 1187)	<ul style="list-style-type: none"> •Water projects are authorized for multiple purposes, including power, municipal and industrial water supply, navigation, and flood control. •Construction of projects is financed by appropriated funds. •Development period of up to 10 years is added to irrigators' repayment schedule. •Some construction costs are designated as nonreimbursable. • Power costs are to be repaid with interest. •Municipal and industrial water supply costs can be repaid with interest. •Repayment of irrigation costs remains interest-free.
Rehabilitation and Betterment Act of 1949 (63 Stat. 724)	<ul style="list-style-type: none"> •Repayment of expenditures is authorized for the rehabilitation and betterment of the irrigation systems of existing Bureau projects in installments fixed according to the water user's ability to pay.
Federal Water Project Recreation Act of 1965 (P.L. 89-72, 79 Stat. 213)	<ul style="list-style-type: none"> •Up to 50 percent of the separable construction costs for recreation and fish and wildlife enhancement are deemed nonreimbursable. • Reimbursable costs for these purposes are to be repaid with interest over 50 years.
Reclamation Reform Act of 1982 (43 U.S.C. 390aa to zz-1)	<ul style="list-style-type: none"> •The acre limit that an individual or legal entity can irrigate with water from a federal project is increased from 160 acres to 960 owned or leased acres. •Owned land above the acre limit cannot be irrigated with federal water. •Irrigators are required to pay full cost for water delivered to leased land over their acre limit.

Typical Allocation of Federal Water Project Construction Costs



Allocation of Construction Costs for 133 Water Projects, by Specific Project Purpose and Amount, as of September 30, 1994

Type of costs	Amount
Reimbursable costs	
Irrigation	\$7,095,702
Municipal and industrial water supply	3,103,283
Power	6,373,084
Other	292,605
Subtotal	\$16,864,674
Nonreimbursable costs	
Flood control	\$1,093,760
Recreation	504,149
Fish and wildlife	929,980
Highway improvement	80,482
Safety of dams	750,683
Cultural restoration	54,943
Indian use	806,615
Other	739,610
Subtotal	\$4,960,222
Total costs	\$21,824,896

Source: Bureau of Reclamation Project Construction Cost and Repayment Reports as of September 30, 1994.

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