



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

POTENTIAL OPPORTUNITY FOR REVENUE IN THE CONVEYANCE OF NON-PROJECT WATER



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Memorandum

JAN 17 2018

To: Brenda Burman
Commissioner, Bureau of Reclamation

From: Mary L. Kendall *Mary L. Kendall*
Deputy Inspector General

Subject: Management Advisory – Potential Opportunity for Revenue in the Conveyance of
Non-Project Water
Report No. 2017-WR-029

We recently conducted a review of the Bureau of Reclamation's (USBR's) administration of transfers and conveyances of water. Our objective was to determine whether the transfers and conveyances facilitated by the USBR were done in accordance with applicable laws, regulations, and policies. We did not make a determination because a legal opinion on the application of the Warren Act of 1911 (Pub. L. No. 61-406) should be obtained. We found that the USBR may have the opportunity to collect millions of dollars in revenues related to water conveyed in water projects such as California's Central Valley Project (CVP).

Background

The CVP is the largest water supply project in the United States. Authorized in 1937 by Congress, it provides water to more than 3 million acres of farmland, which produce crops worth \$3 billion a year, as well as municipal and industrial users. Reclamation law requires that those who benefit from the project repay the Federal investment. In 1986, Congress established 2030 as a firm repayment deadline for all costs. As of 2015, the remaining balance on the Federal investment was \$593 million.

The USBR facilitates the movement of water from one contractor to another in the CVP through transfers of project water and approval of conveyance of non-project water through Federal facilities. The Central Valley Project Improvement Act of 1992 (Pub. L. No. 102-575) is cited as the authority for transfers of project water. The Warren Act is cited as the authority for conveyance of non-project water. Specifically, the Warren Act allows the Secretary of the Interior to contract for the impounding, storage, or carriage of non-project water when there is excess availability within a project.

Methodology

Our review included both the transfer of project water and the conveyance of non-project water. We did not verify the accuracy or completeness of the water data provided by the USBR as they do not affect the validity of our finding. We ended this evaluation during the survey

phase and did not continue into fieldwork because we determined that a legal opinion on the Warren Act is needed.

We conducted our review in accordance with the Quality Standards for Inspection and Evaluation as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendation.

Finding

The USBR may have the opportunity to recoup millions of dollars toward the Federal investment in water projects.

We found that contractors charged other contractors more than they paid the USBR for water conveyance. Based on water data for 2012 to 2015 provided to us by the USBR and contractors, the USBR facilitated the movement of more than 2 million acre-feet of water between contractors through the CVP, over 800,000 acre-feet of which was moved under the Warren Act. The market price ranged from \$55 to \$1,655 per acre-foot for those years. This price was often significantly more than the conveyance price the USBR charged. For example, we found instances when the conveyance price the USBR charged was just \$31. Based on the market prices we were given, contractors potentially generated revenue between \$192 million and \$1 billion on water conveyed under the Warren Act (see Figure 1 for details). Yet the Warren Act states:

No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of the carriage and delivery of such water through their works.

Furthermore, 43 U.S.C. § 526 states:

All moneys or profits as determined by the Secretary heretofore or hereafter derived from the sale or rental of surplus water under the Warren Act, or from the connection of a new project with an existing project shall be credited to the project or division of the project to which the construction cost has been charged.

	2012	2013	2014	2015	Total
Mid-Pacific Region Warren Act deliveries (in acre-feet)	109,630	143,735	240,869	339,968	834,202
Low price	\$158	\$150	\$55	\$412	N/A
High price	\$347	\$356	\$1,583	\$1,655	N/A
Revenue generated at low price (in millions)	\$17	\$22	\$13	\$140	\$192
Revenue generated at high price (in millions)	\$38	\$51	\$381	\$563	\$1,033

Figure 1. Summary of potential revenue generated by contractors on water conveyed under the Warren Act.

USBR officials stated that the price of water conveyed under the Warren Act has two components. The first is the price the USBR charges for the conveyance of non-project water through Federal facilities, and the second is a negotiated price for the water between a willing buyer and willing seller. USBR officials also stated that the Warren Act only applies to the USBR's charges for the conveyance of the water; the second component of the price does not fall under the Warren Act, and the USBR is neither aware nor notified of the negotiated price between the willing buyer and seller. No formal legal opinion has been requested by the USBR regarding the disposition of the funds exchanged between the buyer and seller when water is conveyed under the Warren Act.

Conclusion

We found that the USBR may have the opportunity to collect millions of dollars in revenues related to water conveyed in water projects such as the CVP. Although we found no formal legal opinion regarding how the Warren Act should be applied to non-project water conveyed through Federal facilities, the potential revenue generated is so large that it is critical for the USBR to ensure it is administering the conveyance of non-project water as intended. Without a formal legal opinion, the USBR has no assurance that it is not neglecting millions of dollars in revenues related to water transfers.

Recommendation

We recommend that the USBR obtain a legal opinion from the Department's Office of the Solicitor to determine whether (1) contractors are allowed to collect revenue in excess of costs and make a profit on the conveyance of non-project water through Federal facilities, and (2) any moneys or profits derived from such conveyances must be credited to the project or division of the project to which the construction cost has been charged or to the U.S. Treasury.

Please provide us with your written response to this management advisory within 30 days. The response should provide information on actions taken or planned to address the recommendation, as well as target dates and title(s) of the official(s) responsible for implementation. Please send your response to aie_reports@doioig.gov.

The information in this management advisory will be included in our semiannual report to Congress and posted on our website. Please contact me at 202-208-5745 if you have any questions.

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