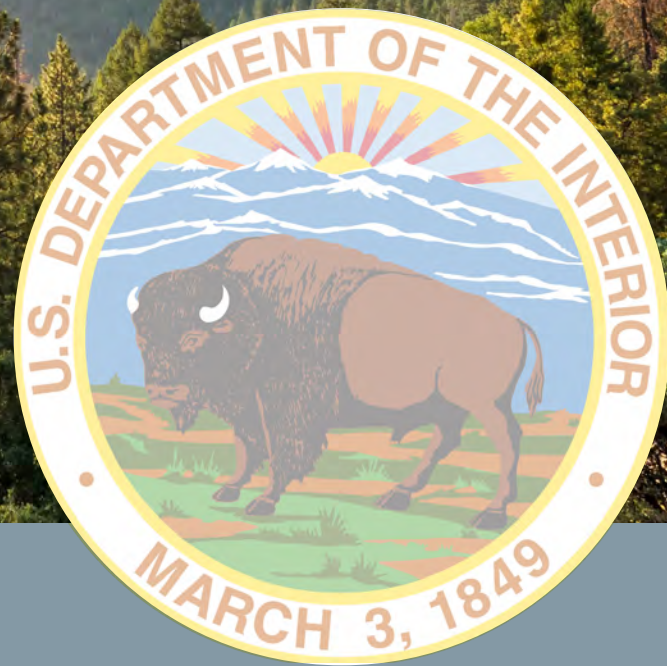




OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR



Management Advisory



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

JUL 09 2025

Memorandum

To: Scott Cameron
Senior Advisor to the Secretary, Exercising the Delegated Authority of the Assistant Secretary –
Water and Science

From: Nicki Miller *Nicki Miller*
Acting Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Final Management Advisory – *Risks Identified for Inflation Reduction Act Funds Awarded by the
U.S. Bureau of Reclamation for Drought Mitigation Projects*
Report No. 2023-WR-035-A

The Inflation Reduction Act of 2022 (IRA) appropriated \$4 billion for the Secretary of the Interior to use for activities that specifically mitigate the impact of drought in the Western States.¹ As of December 4, 2024, the U.S. Bureau of Reclamation (BOR) had allocated 69 percent of the \$4 billion to the Lower Colorado River Basin (LCRB). BOR's initial allocations included \$1.3 billion for water conservation projects focused on short-term voluntary reductions in diversion of water or consumptive use, such as fallowing fields (referred to as "Bucket 1" projects), and \$1.45 billion for long-term durable infrastructure projects, such as the construction of water reservoirs and canal lining (referred to as "Bucket 2" projects).² BOR had awarded about \$1.4 billion in Bucket 1 awards and \$657 million in Bucket 2 awards as of March 2025. Bucket 2 awards are the primary focus of this management advisory, which highlights the risks we have identified with how BOR administers IRA drought mitigation funds.

In ongoing audit work specific to BOR's IRA activities in the LCRB,³ we observed that BOR was awarding IRA funds using template agreements that BOR classifies as "water-related contracts" for Bucket 1 projects.⁴ These agreements lacked requirements—such as those found in 2 C.F.R. Part 200—that would provide sufficient and clear oversight and hold award recipients accountable.⁵ In accordance with its internal policies, BOR processed the awards as miscellaneous obligations, which resulted in a lack of public transparency. Specifically, although USASpending.gov publicly reports Federal Government spending disbursed via contracts and grants, miscellaneous obligations are not reported.

¹ IRA, Pub. L. 117-169, 136 Stat. 2053 § 50233 (2022).

² The BOR uses three funding categories, termed "Buckets," to disburse IRA funds for water conservation purposes. Bucket 1A is designed to address short-term water reductions and pays water-entitlement holders to reduce water use in the short term. The price paid per acre foot conserved is determined by the length of each agreement. Bucket 1B allows water-entitlement holders to submit a water conservation plan that can be implemented to reduce their Colorado River water use. However, unlike Bucket 1A, 1B agreements do not have a set price; instead, water-entitlement holders propose a price per acre-foot and provide an economic explanation for the price. In this management advisory, we collectively refer to Buckets 1A and 1B as Bucket 1. Bucket 2 is described in the report.

³ Our objective was to determine whether BOR awarded drought mitigation funds consistent with the authorizing language in the IRA and applicable laws and regulations.

⁴ For the purposes of awarding IRA funds in the LCRB, BOR issued water-related contracts. BOR categorized the water-related contracts for LCRB awards as "miscellaneous obligations" in internal financial systems. Miscellaneous obligations are a type of financial transaction. Other transaction types commonly used to award Federal funds include grants, cooperative agreements, and procurement contracts.

⁵ 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," contains critical regulations for entities that receive Federal funding, including detailed regulations governing the proper administration and expenditure of funds awarded under financial assistance agreements, such as grants and cooperative agreements.

In December 2023, we notified the BOR Commissioner that using water-related contracts for Bucket 2 projects would create increased risk given the anticipated complexity of long-term infrastructure projects. However, BOR officials informed us in November 2024 that BOR had since awarded \$107 million in IRA funding via three Bucket 2 water-related contracts. After examining the three Bucket 2 agreements, we concluded that the water-related contracts achieved purposes for which financial assistance agreements, such as grants or cooperative agreements, are appropriate and that these alternative vehicles could have been prudentially used to mitigate potential fraud, waste, and mismanagement and to provide greater transparency. Because of this, we issued this management advisory to DOI in draft on January 22, 2025. As of March 31, 2025, BOR has awarded \$657 million in Bucket 2 agreements.

As of March 31, 2025, BOR has \$549 million in funds remaining for additional Bucket 2 projects (see Figure 1). If BOR continues to use water-related contracts and miscellaneous obligations for these projects, there is an increased risk of fraud, waste, and abuse and a continued lack of transparency. In addition, BOR may be limited in its ability to mitigate risks associated with the \$657 million in Bucket 2 funding that it already executed through existing agreements.

Figure 1: IRA Funds Allocated to the LCRB as of March 31, 2025

Program	Allocated*	Awarded†	Remaining‡
Short term (Bucket 1)	\$1,395,200,000	\$1,355,628,470	\$39,571,530
Long term (Bucket 2)	\$1,205,700,000	\$656,825,482	\$548,874,518
Totals	\$2,600,900,000	\$2,012,453,952	\$588,446,048

* Amounts BOR budgeted per program; these amounts are subject to change.

† Amount of all signed agreements issued under the specified category.

‡ Allocated dollars in the specified category less awarded dollars.

Source: OIG created with data provided by BOR.

Risk Associated with BOR’s Use of Miscellaneous Obligations for IRA Awards

When BOR awarded the water-related contracts for IRA awards, it processed the related financial transactions as miscellaneous obligations in its internal financial systems. The U.S. Department of the Interior’s *Policy on Appropriate Uses of Miscellaneous Obligations*, issued in May 2013, defines a miscellaneous obligation as a type of document not processed through acquisition, which may include items such as inter/intra-agency agreements, travel, training, charge card, and other authorized purchases. BOR’s own miscellaneous obligations policy⁶ states that water-related contracts are an allowable use of miscellaneous obligations and that miscellaneous obligations are not subject to the Federal Acquisition Regulation or the C.F.R. The policy also identifies other expenditures that are deemed appropriate for miscellaneous obligations, such as training, licensing fees, prize competition awards, legal settlements, and tort claims.

During our audit, we determined that BOR’s use of miscellaneous obligations for \$2.75 billion in IRA funds for drought mitigation projects raises substantial concern regarding the adequacy of BOR’s internal policies to mitigate fraud, waste, and mismanagement. We raised these concerns to BOR during this audit, and BOR officials⁷ stated multiple reasons why BOR awarded IRA funds using water-related contracts and

⁶ BOR, *Reclamation Manual*, Financial Management (FIN) 10-01, “Miscellaneous Obligations,” issued October 2019.

⁷ BOR’s IRA implementation plan delegated authority to the Lower Colorado Regional Office—specifically, the Boulder Canyon Operations Office—for the purpose of soliciting proposals and issuing awards for projects in the LCRB.

miscellaneous obligations as opposed to financial assistance agreements. The proffered reasons do not, however, resolve the concerns.

BOR Statement 1: BOR policy requires a water-related contract be used for any agreement in which a water-entitlement holder agrees to a reduction in water orders, resulting in water savings to the Federal Government.⁸

OIG Response: The BOR Reclamation Manual (RM) contains BOR's policy and directives that collectively assign program responsibilities and establish BOR's methods of conducting business. The RM states that all requirements are mandatory but also includes procedures to deviate from RM requirements, where appropriate. For example, RM Policy PEC P05, *Water-Related Contracts and Charges – General Principles and Requirements*, prescribes when water-related contracts are required and states "given the variability of circumstances affecting these activities, it is appropriate to note that requests can be made . . . for waivers from RM Policy requirements." Further, PEC P05 provides specific guidance on requesting deviation for water-related construction contracts, noting that "if an alternative to a contract is appropriate or the situation demands that work begins before a contract can be executed, a waiver from this requirement can be requested." As described previously, BOR's disbursement of \$4 billion in IRA funds for drought mitigation projects through water-related contracts and miscellaneous obligations lack the controls available in financial assistance agreements. Accordingly, these circumstances may warrant using financial assistance agreements and, if necessary, seeking an RM deviation. For the reasons discussed below, financial assistance agreements are a prudentially better alternative to mitigate fraud, waste, and abuse and provide the transparency lacking in BOR's current process.

BOR Statement 2: Boulder Canyon Operations Office (BCOO)⁹ employees are not certified grants fiscal officers or Federal contracting officers; therefore, they lack the proper certifications to enter into Federal Acquisition Regulation contracts or grant agreements. For this reason, BCOO has relied on how it has traditionally used water-related contracts for these types of actions.

OIG Response: Reliance on BOR's historical practices does not account for the fact that BOR is now disbursing exponentially larger amounts of funds—especially Bucket 2 funds. These funds are at greater risk for fraud, waste, and abuse because they will be used for complex infrastructure projects such as construction and canal lining projects. Other BOR employees in the region have awarded IRA funds via grants and cooperative agreements; therefore, opportunities already exist for BOR to award Bucket 1 and Bucket 2 funds using financial assistance agreements.

BOR Statement 3: Financial assistance agreements would not be feasible because they do not require consideration from a recipient, and the IRA-funded projects would require negotiated expectations from both parties.

OIG Response: Financial assistance agreements contain specific requirements that the awardee must meet to receive funds from the Federal awarding agency. However, funds are provided to the recipient only to the extent that the agreement's objectives are met. This illustrates that financial assistance agreements do require consideration from a recipient.

BOR's Bucket 2 Water-Related Contracts Pose Significant Risk to IRA Funds

BOR requires its water-related contracts to contain language that states such agreements must protect the interests of the United States. We reviewed all three Bucket 2 awards issued as of December 4, 2024, valued at \$107 million, and determined that all appear similar in design, use a template format, and contain some oversight and management activities consistent with 2 C.F.R. Part 200. These include the requirements for

⁸ BOR, RM, Program Economics, Revenues and Contracts (PEC) P05, "Water-Related Contracts and Charges – General Principles and Requirements," issued July 2013.

⁹ BCOO is the BOR division primarily responsible for awarding IRA funds in the LCRB.

progress reports, financial reports, and verbiage that outlines reimbursement requirements. However, 2 C.F.R. Part 200 contains those requirements in greater detail, which, if incorporated, would enhance BOR's oversight. Furthermore, we noted that additional 2 C.F.R. requirements that would further ensure sufficient oversight and monitoring are absent from the Bucket 2 awards, such as:

- Requiring that BOR perform risk assessments of recipients (2 C.F.R. § 200.206).
- Requiring that recipients perform risk assessments of subcontractors and subrecipients (2 C.F.R. § 200.332(c)).
- Specifying financial management and records maintenance requirements (2 C.F.R. §§ 200.302 and 200.337).
- Mandating the use of standardized Office of Management and Budget forms for performance and financial reporting (2 C.F.R. § 200.329(b)).
- Requiring the recipient to notify the Federal awarding agency of significant developments that affect the award (2 C.F.R. § 200.329(e)).

The performance requirements that hold water-related contract recipients accountable are limited to the performance requirements in the agreements. In August 2024, BOR awarded a \$17-million Bucket 2 agreement for construction of a reservoir in exchange for conserving 13,100 acre-feet of water in Lake Mead for over 10 years. Under the agreement, the recipient could keep 25 to 50 percent of the value of the contract that corresponds with the portion of water it failed to conserve.¹⁰ Conversely, using a grant agreement would allow BOR to have an accountability mechanism if a recipient does not meet the terms and conditions of an award. Because BOR is awarding billions of Federal funds to recipients using water-related contracts and miscellaneous obligations, as opposed to Federal financial assistance agreements, significant risks exist related to ensuring proper oversight and responsible use of taxpayer funds for future projects.

Federal regulations at 2 C.F.R. Part 200 provide a framework for holding award recipients accountable for the proper use of taxpayer dollars. While reviewing the three Bucket 2 agreements, we identified key requirements established under 2 C.F.R. Part 200 that were absent in BOR's existing Bucket 2 water-related contracts, including:

- 2 C.F.R. Part 200, Subpart E, which outlines cost principles for Federal awards, detailing allowable and unallowable costs, general provisions, and guidelines for direct and indirect costs. It mandates efficient administration and compliance with Federal statutes and terms; defines allowable costs as reasonable, allocable, and necessary; and details the treatment of specific costs, such as salaries, fringe benefits, equipment, travel, and indirect costs. These regulations contain significantly detailed expenditure and documentation requirements. By contrast, the three Bucket 2 agreements we reviewed only require that the expenditures are "allowable, allocable, and reasonable under the terms and conditions of [the agreements]."
- 2 C.F.R. § 200.303, which requires recipients and subrecipients to maintain effective control over the Federal award to provide reasonable assurance that the award is managed in compliance with applicable laws and regulations.
- 2 C.F.R. § 200.305, which sets Federal payment request requirements, emphasizing reimbursements for specific projects and the ability to withhold payments if conditions are not met. Further regulations at 2 C.F.R. § 200.339 allow the Federal awarding agency to disallow costs when recipients fail to meet performance requirements.

¹⁰ For example, if the recipient conserved only half (6,550 acre-feet) of the water it agreed to conserve, it would still get to keep \$10.7 million to \$12.8 million (significantly more than half of the total award amount), depending on the circumstances resulting in the failure to conserve the agreed-upon volumes of water.

- 2 C.F.R. § 200.113, which requires recipients and subrecipients to disclose credible evidence of civil and criminal violations related to Federal awards to the agency and the Office of Inspector General, ensuring suspected fraud is reported to the appropriate authorities.
- 2 C.F.R. § 200.322, which requires recipients to provide preferences for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This requirement would also flow through to any potential subawards and subcontracts.
- 2 C.F.R. § 200.331, which outlines the process for determining whether a pass-through entity should be considered a contractor or subrecipient. If deemed a subrecipient, further oversight regulations apply to the entity, including publicly reporting subawards of \$30,000 or more.

These additional requirements emphasize transparency, accountability, and alignment with Federal goals for managing and reporting on Federal awards. Federal regulations in 2 C.F.R. Part 200 provide the Federal Government with essential protections, such as internal control requirements and performance assurances. Further, given the historic nature of the IRA and its financial impact, a preference for domestic purchases enhances the Federal Government's investment in domestic infrastructure projects. These regulations, which were the result of a lengthy process of rulemaking and public comments, are intended to improve award oversight and accountability of funds.

Conclusion and Recommendations

It is BOR's responsibility to comply with the IRA and use an award instrument that ensures proper stewardship of Federal funds.¹¹ Although authorized, BOR's practice of using water-related contracts and processing IRA awards as miscellaneous obligations is not consistent with its obligation to leverage award instruments that provide appropriate controls to mitigate the risk of fraud, waste, and abuse. In fact, the absence of standardized cost principles and procurement standards in these agreements increases financial mismanagement risks, and noncompliance with these regulations could damage BOR's reputation and public trust, leading to legal challenges and penalties. Additionally, BOR's practices lack appropriate public transparency which could be corrected with using financial assistance agreements.

We provided a draft of this management advisory to the DOI Acting Secretary for review. The Senior Advisor to the Secretary, exercising the delegated authority of the Assistant Secretary - Water and Science, provided BOR's written response to our management advisory on behalf of the Acting Secretary. BOR did not concur with Recommendations 1 and 3, and we consider these recommendations unresolved. We determined that Recommendation 1 is significant, and it will be reported as such in our *Semiannual Report to Congress* in accordance with the Inspector General Act.¹² Below, we summarize BOR's response to our recommendations, as well as our comments on its responses. See Attachment 1 for the full text of BOR's response; Attachment 2 lists the status of each recommendation.

We recommend that BOR:

1. Immediately suspend the awarding of Inflation Reduction Act funds using miscellaneous obligations.

BOR Response: BOR did not concur with our recommendation. BOR referred, generally, to its response to Recommendation 2. In that response, BOR concluded that water-related contracts, which

¹¹ Pub. L. 117-169, 136 Stat. 2053, Section 50233 states, "In addition to amounts otherwise available, there is appropriated to the Secretary (acting through the Commissioner of Reclamation), for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$4,000,000,000, to remain available through September 30, 2026, for grants, contracts, or financial assistance agreements, in accordance with the Reclamation Laws, to or with public entities and Indian Tribes, that provide for the conduct of the following activities to mitigate the impacts of drought."

¹² The Inspector General Act of 1978, 5 U.S.C. § 405(b), requires inspectors general to prepare semiannual reports summarizing OIG activities during the immediately preceding six-month periods ending March 31 and September 30. It also states that these semiannual reports should identify each "significant recommendation" described in previous semiannual reports in which corrective action has not been completed.

are processed as miscellaneous obligations, are not prohibited by Reclamation Law and their use is consistent with preexisting practices.

OIG Response: We consider this recommendation unresolved based on BOR's response.

While BOR's use of miscellaneous obligations may be authorized, the use of miscellaneous obligations does not provide transparency and is not consistent with BOR's obligation to leverage award instruments that provide appropriate controls to mitigate the risk of fraud, waste, and abuse. BOR should reconsider its use of miscellaneous obligations to ensure that the risks associated with awarding \$4 billion are mitigated to the greatest extent possible to protect taxpayer dollars and secure the IRA's stated public purpose as mandated by Congress.

Additionally, our conclusion that BOR should use financial assistance instruments, such as grants, for these awards is further supported by Federal guidance contained in the Federal Grant and Cooperative Agreement Act of 1977.¹³ That Act states that grants should be used when the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute.

2. Obtain a written solicitor's opinion regarding the proper awarding instrument(s) and financial transaction process that the Bureau of Reclamation should use when awarding the \$4 billion in Inflation Reduction Act funds.

BOR Response: BOR concurred with this recommendation and sought legal review of its use of water-related contracts and miscellaneous obligations to award IRA funds. The Solicitor expressed its agreement with a memorandum from BOR generally describing its award process, understanding of Reclamation Law, and discretion under Section 50233 of the IRA, which authorizes BOR to use grants, contracts, or financial assistance agreements in accordance with Reclamation Laws when awarding IRA funds. BOR determined that water-related contracts and miscellaneous obligations are not prohibited by Reclamation Law and are consistent with existing practices. The SOL concurred with BOR's analysis.

OIG Response: We consider this recommendation implemented because BOR obtained a written SOL opinion regarding its use of water-related contracts as awarding instruments. We note, however, that neither BOR's description of its current practice nor the legal sufficiency concurrence BOR obtained identify a legal basis that *precludes* the use of financial assistance agreements to prudentially mitigate the serious risk of fraud, waste and abuse associated with awarding these \$4 billion in funds. As BOR noted, it has discretion to use an appropriate awarding instrument to achieve the public purposes required by the IRA; as noted above, BOR's own RM policies allow for deviation from existing procedure when warranted. This flexibility should be leveraged to ensure that the risks associated with awarding \$4 billion are mitigated to the greatest extent possible to protect these taxpayer dollars and secure the IRA's stated public purposes as mandated by Congress.

3. Identify and implement additional oversight controls for existing Bucket 2 agreements as defined in this report (namely, long-term durable infrastructure projects).

BOR Response: BOR did not concur with our recommendation. In its response, BOR stated that financial assistance agreements do not require a specific deliverable and that IRA projects need to use a funding instrument that can enforce the project completion and water commitments described in the water-related contract.

BOR moreover explained that it did not believe it was necessary to implement the oversight controls in 2 C.F.R. Part 200, stating that "existing agreements already include extensive oversight control and safeguards." BOR's response lists multiple oversight controls that it will use to reduce risk and ensure

¹³ 31 U.S.C. §§ 6301, et seq.

system conservation. BOR stated that water-related contracts will incorporate requirements to ensure the appropriate level of oversight of recipient performance and accountability. BOR listed these controls in its response, including exclusion list checks using SAM.gov (System for Award Management) and contract clauses that allow for monitoring project performance and spending.

OIG Response: We consider this recommendation unresolved based on BOR's response. We will consider this recommendation resolved when BOR has identified additional and sufficient oversight controls for existing Bucket 2 agreements. Additional oversight controls should include, at a minimum, more detailed requirements regarding allowable costs, subrecipient monitoring, and strict reimbursement provisions.

Contrary to BOR's statement, financial assistance agreements require specific deliverables. We routinely audit DOI grants and have questioned costs when the grant recipient failed to meet the award objectives. Additionally, to the extent that BOR concludes that it is important to use a funding instrument that can support enforcement of project completion, water-related contracts do not serve this purpose effectively, as those awards allow the recipient to receive significant Federal funds even if the recipients fail to complete the projects.

In ongoing audit work related to BOR's IRA programs, we have observed control deficiencies with BOR's monitoring and oversight processes. We have issued audit findings to BOR related to these control deficiencies. In one audit, we found that, when awarding Bucket 1 awards, BOR failed to check the Federal exclusions list using SAM.gov. In a separate audit, we found that BOR failed to properly document and review monitoring activities, including recipient site visits. As a result of BOR's failure to properly monitor award recipients in accordance with its internal procedures, we questioned costs on an IRA award. BOR's statement that its existing oversight and monitoring policies sufficiently reduce risk is not supported by the evidence we have gathered during our ongoing audit work. Furthermore, in this management advisory, we identified various ways the oversight and monitoring controls in BOR's Bucket 2 awards fall short of those required by 2 C.F.R. 200. Therefore, more detailed and robust oversight and monitoring requirements are necessary and appropriate for the billions in taxpayer funds that are being awarded under the IRA.

We will track open recommendations for resolution and implementation. We will notify Congress about our findings, and we will report semiannually, as required by law, on actions you have taken to implement the recommendations and on recommendations that have not been implemented. We will also post a public version of this report on our website.

If you have any questions regarding this report, please contact me at aie_reports@doioig.gov.

cc: David Palumbo, Deputy Commissioner – Operations, Exercising the Delegated Authority of the Commissioner, Bureau of Reclamation

Attachments (2)

Attachment 1: Response to Draft Report

BOR's response to our draft report follows on page 9.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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FEB 25 2025

VIA ELECTRONIC MAIL ONLY

Memorandum

To: Office of Inspector General
Office of Inspector General Audit, Inspection and Evaluation

From: Scott J. Cameron
Senior Advisor to the Secretary
exercising the delegated authority of the
Assistant Secretary -- Water and Science 

Subject: Bureau of Reclamation's Response to the Office of Inspector General (OIG) Draft
Management Advisory, *Risks Identified for Inflation Reduction Act Funds Awarded by the U.S.
Bureau of Reclamation for Drought Mitigation Projects*, Report No. 2023-WR-035-A

The Bureau of Reclamation (Reclamation) has reviewed draft report 2023-WR-035-A and is providing responses to the recommendations below:

Recommendation 1: *Immediately suspend the awarding of IRA funds using miscellaneous obligations.*

Reclamation's Response: Reclamation does not concur with the immediate suspension of awarding future projects using miscellaneous obligations as described in the Advisory. Use of miscellaneous obligations is further addressed under Recommendation 2.

Recommendation 2: *Obtain a written solicitor's opinion regarding the proper awarding instrument (s) and financial transaction process Reclamation should use when awarding the \$4 billion in IRA funds.*

Reclamation's Response: Reclamation concurs with the need for solicitors' input and has already received concurrence from the Solicitor's Office on Reclamation's use of miscellaneous obligations. When working with the auditors of this report during the investigation, it was suggested, for the bucket 2 program, consideration be given to all available mechanisms for awarding Inflation Reduction Act (IRA) funds. The consideration was conducted at various levels of the organization and the determination was made to use water contracts resulting in miscellaneous obligations for the reasons noted below. Reclamation received the Solicitor's Office concurrence, dated November 25, 2024, via the memorandum titled "Memorandum for Inflation Reduction Act Bucket 2 Funding Award Mechanisms". See Attachment 1.

This memorandum was developed, reviewed, and concurred with by Lower Colorado Basin Financial Assistance Staff, Denver Financial Assistance Staff, Reclamation Law Administration Division, and the Solicitor's Office, Division of Water Resources (in consultation with General Law).

Reclamation also agrees it must comply with 31 U.S.C. § 6304, which states “An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when – (1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government;” The principal purpose of the IRA is to help mitigate the impacts of the prolonged drought and historic low runoff conditions that have led to historically low water levels in Lakes Powell and Mead (See Public Law 117-169, 136 Stat. 2053 § 50233 (2022)). The purpose of the Lower Colorado River Basin Conservation and Efficiency Program has been, in part, to address the drought crisis with prompt and responsive actions and investments of IRA dollars to ensure the Colorado River Basin can function, generate hydropower, and support the more than 40 million people who rely on the Colorado River. To achieve this, Reclamation provided new opportunities to fund system conservation and efficiency in the Lower Colorado River while also requiring these opportunities to result in conserved water remaining in Lake Mead as system conservation water.

As such, the primary purpose of awarding IRA funds has been far more than simply providing funds to a project recipient for drought mitigation projects. It also serves the essential purpose to secure critical system conservation water to prop up depleting water levels in Lake Mead. As described below, securing system conservation water for Lake Mead requires Reclamation to enter a water contract with any project participant and cannot be effectuated through a financial assistance agreement. Therefore, Reclamation strongly disagrees with the Management Advisory’s assertion Reclamation is not complying with 31 U.S.C. § 6304 and other Federal law.

While considering 31 U.S.C. § 6304, solicitor guidance, the Reclamation Manual, and the options available for obligating this type of agreement, Reclamation used water contracts and miscellaneous obligations meeting the dual purpose of bucket 2 awards: provide funding for partners to construct an infrastructure project and, pursuant to the Secretary of the Interior’s role as Lower Colorado River Water Master, ensuring critical conserved water is left in Lake Mead.

To ensure conserved water can be left in Lake Mead as system conservation water, Reclamation must enter a water contract with any project participant. The Boulder Canyon Project Act, of December 21, 1928 (Public Law 70-642; 45 Stat. 1057), made the Secretary of the Interior the Water Master of the Lower Colorado River. This role as Water Master was confirmed by the Supreme Court in *Arizona v. California*, 373 U.S. 546 (1963) and the 2006 Consolidated Decree. As the Water Master, the Secretary is tasked with operating the river and its regulatory structures for river regulation, improvement of navigation and flood control, for irrigation and domestic uses, including the satisfaction of present perfected rights, and for power (2006 Consolidated Decree II.A.). The Supreme Court prohibited Reclamation from delivering water to any user unless the user has a valid contract pursuant to Section 5 of the Boulder Canyon Project Act.

Reclamation is required to enter federally authorized contracts for water and for water-related projects (including system conservation efforts, such as the Pilot System Conservation Program) with non-federal contract holders as guided by Reclamation Manual Policy, regardless of the specific nature of the contract action. Reclamation Manual Policy, *Water-Related Contracts and Charges – General Principles and Requirements*, PEC P05: 3.A.1.a. states, “...Reclamation is not authorized to deliver or store project or non-project water, permit the use of Federal facilities, or recover reimbursable project costs except pursuant to a contract authorized by Federal law.” It further states, “Reclamation’s water-related contracting program provides water and related project benefits, in addition to recovering reimbursable costs in a manner that is consistent with relevant law. Program activities are conducted in a way that accommodates varying circumstances, changing demands, environmental needs, and Reclamation’s

obligations to American Indian tribes” (PEC P05: 1.). The principles and requirements detailed in PEC P05 allow for provisions to protect Reclamation interests, ensure compliance with relevant laws, and facilitate the setting of contract terms. This framework ensures that all applicable laws, environmental compliance, and contract oversight and financial processes are tracked and have appropriate levels of Reclamation approval. Financial controls are already in place through the established process of Miscellaneous Obligation Reimbursements, which is commonly used for water-related contracts (Reclamation Manual Directive and Standard, *Miscellaneous Obligations (MO)* – FIN 10-01, 4. D. (8)) and has an established financial tracking and invoice approval process.

The authority for water contracts dates to 1902 for repayment contracts and 1936 for water service contracts. Congress understood the complexity of water in the West and the nuances were much different than regular procurement. Some of the history is described in CRS reports [R46303.pdf \(SECURED\) \(congress.gov\)](#), and [CRS Report, 30.pdf \(SECURED\) \(congress.gov\)](#). The latter report particularly addresses Management of the Colorado River and references the Supreme Court opinion addressing Congress having granted the Department of the Interior the exclusive authority to enter contracts with Lower Basin users to apportion stored water, and said contracts determine how water is delivered. The CRS report substantiates the relevance of Reclamation’s water contract authority, and that there is no other vehicle to accomplish the water contractor type agreements.

The next element to address would be how to obligate water contracts. Reclamation’s obligation tools are FAR contracts, financial assistance agreements, payroll, travel transactions, credit card transactions, and miscellaneous obligations. The agreements do not fit the criteria for FAR contracts ([R42826.pdf \(SECURED\) \(congress.gov\)](#)). Additionally, water contracts as employed in this program specific to individual entities’ water portfolios are not “competitive” and would always be sole source. Financial assistance agreements do not require consideration in return from a recipient. Financial assistance processes would not work for water contracts because there are negotiated expectations from both parties. Reclamation needed an agreement by which the consideration of water conserved was tied to the funding provided by the legislation and water contracts (System Conservation Implementation Agreements) accomplished both requirements in an efficient and responsible manner. By process of elimination, the obligation tool is a miscellaneous obligation. Reclamation has established a substantial Directive and Standard around Miscellaneous Obligations (FIN 10-01.pdf (usbr.gov)). Reclamation is ensuring System Conservation Implementation Agreements are managed to meet the integrity and purpose of their underlying authority and purpose with safeguards to protect taxpayer dollars.

Responsible Official: Commissioner, Bureau of Reclamation

Target Implementation Date: Complete - Solicitor Concurrence Obtained November 25, 2024

Recommendation 3: *Identify and implement additional oversight controls for existing Bucket 2 agreements.*

Reclamation’s Response: Reclamation non-concurs with this recommendation because existing agreements already include extensive oversight control and safeguards. These controls and safeguards were developed through consultation with the Solicitor’s Office, Lower Colorado Basin Financial Assistance Staff, Denver Financial Assistance Staff, and Reclamation Law Administration Division. Reclamation will consider additional safeguards for future agreements as appropriate.

Oversight controls and safeguards implemented include:

- Financial Responsibility Check: Conducted using SAM.gov (System for Award Management).

- **Technical Viability and Risk Assessment:** Performed through expedited design, estimating, construction reviews.
- **Monitoring Clauses:** Included in contracts to assess project performance and expenditures (see sections 8 and 10 of Attachment 2). If deemed necessary by Reclamation, site visits, conference calls and other on-site and off-site monitoring may be performed. Release of funding is tied to milestone accomplishment and requests for payment. Frequency of monitoring varies by contract and risk determination.
- **Commitment Clauses:** New clauses were included in contracts and obligates the recipient to leave water in Lake Mead regardless of project completion or meeting estimated claims of water conservation produced by the project. Added new reimbursement provisions to ensure IRA funds result in a completed infrastructure project and conserved water in Lake Mead.

Reclamation has taken careful consideration to ensure these contracts contain oversight controls and safeguards in place to ensure investments of IRA dollars are made in an efficient and responsible manner to help mitigate the impacts of the unprecedented drought on the Colorado River. Given the oversight and safeguards in place Reclamation strongly disagrees with the Management Advisory's assertion "billions of taxpayer dollars" are at risk. Furthermore, Reclamation has taken steps to ensure this is a fully open, transparent, and fair process.

For additional information, please contact Acting Commissioner David Palumbo at (202) 513-0508, or via e-mail at DPalumbo@usbr.gov

Attachments

cc: [REDACTED], doi_pfm_am@ios.doi.gov, andrea_brandon@ios.doi.gov, bivan-patnaik@ios.doi.gov, Carter.Brown@sol.doi.gov, CChapmangibbs@ios.doi.gov, Charles_dankert@ios.doi.gov, gavin.frost@sol.doi.gov, Harinder_singh@ios.doi.gov, isis_farmer@ios.doi.gov, jaimc_rulan@ios.doi.gov, karen.hawbecker@sol.doi.gov, kyle.watkins@sol.doi.gov, mili-gosar@ios.doi.gov, naznin_rahman@ios.doi.gov, oluwarotimi_abimbola@ois.doi.gov, preston_heard@ios.doi.gov, sherrill_exum@ios.doi.gov, tonya_johnsonsimmons@ios.doi.gov, wynn_radford@ios.doi.gov,
 91-10000 (ASWSLiaison, CommisssnrEA), 94-00000 (STorpey), 94-00010 (AShepet),
 94-30000 (BHughes-Brown, MOkamura), 94-31200 (MKorber), 96-00000 (MMAucieri, TYonts)
 84-27000 (SDeMarco, HMMorrow), 84-27400 (LGarcia, ANihiser), 84-27410 (AVSmith,
 BLOverdiek, MDiem), 84-55000 (CDiroll, OWalker)
 LCB-1000 (JGould, GJohnson, CDavisKernan, SWade), LCB-10100 (DMBlake),
 LCB-4000 (DBunk), LCB-7000 (JSaxton)
 (w/atts to each)

Attachment 2: Status of Recommendations

Recommendation	Status	Action Required
2023-WR-035-A-01 We recommend that the Bureau of Reclamation (BOR) immediately suspend the awarding of Inflation Reduction Act funds using miscellaneous obligations.	Unresolved	We will consider this recommendation resolved when we receive notice that BOR has suspended awarding IRA funds as miscellaneous obligations.
2023-WR-035-A-02 We recommend that BOR obtain a written solicitor's opinion regarding the proper awarding instrument(s) and financial transaction process that the Bureau of Reclamation should use when awarding the \$4 billion in Inflation Reduction Act funds.	Implemented	No action is required.
2023-WR-035-A-03 We recommend that BOR identify and implement additional oversight controls for existing Bucket 2 agreements.	Unresolved	We will consider this recommendation resolved when BOR has identified additional and sufficient oversight controls for existing Bucket 2 agreements.



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