

CENTRAL VALLEY PROJECT IMPROVEMENT ACT SECTION 3408(h)



LAND RETIREMENT PROGRAM INTERIM GUIDELINES

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**CENTRAL VALLEY PROJECT IMPROVEMENT ACT
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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. OBJECTIVE..... 1

III. AUTHORITY..... 2

IV. APPLICABILITY..... 3

V. PURPOSE..... 3

VI. ELIGIBILITY..... 3

VII. PROCESS..... 4

A. Solicitation of Offers..... 4

B. Applications..... 5

C. Reviews..... 5

D. Preliminary Selection..... 5

E. Confidentiality..... 5

F. Notification..... 5

G. Final Review and Selection..... 6

VIII. RETIREMENT OF LAND..... 6

IX. WATER
MANAGEMENT..... 6

X. DEFINITIONS..... 7

XI. APPENDIX..... 9

Preliminary Application..... 10

Selection Criteria Matrix 11

I. INTRODUCTION

On October 30, 1992, Congress enacted Public Law 102-575. Section 3408(h)(1), Title XXXIV of Public Law 102-575 (known as the Central Valley Project Improvement Act or CVPIA), authorized a federal land retirement program, as recommended in the San Joaquin Valley Drainage Program Final Report (SJVDP, Sept. 1990). Also in 1992, the California State Legislature passed Senate Bill 1669 (SB 1669), the San Joaquin Valley Drainage Relief Act that incorporated the SJVDP recommendations. This State statute authorized a land retirement program (California Water Code, Section 14900) to be administered through the California Department of Water Resources (DWR).

A comprehensive study of agricultural drainage and drainage-related problems on the Westside of the San Joaquin Valley resulted in the management plan presented in the San Joaquin Valley Drainage Program (SJVDP) final report issued in September, 1990. The recommended drainage management actions included the selective retirement of irrigated lands that are characterized by low productivity, poor drainage, and high selenium concentrations in shallow ground water. As currently envisioned, this Land Retirement program will be accomplished cooperatively by the Department of Interior (BOR, FWS, BLM) and California's Department of Water Resources (DWR) through a process in which willing sellers volunteer to remove their lands from irrigated production in return for compensation.

Land retirement, or taking lands out of irrigated agricultural production, is a way to reduce irrigation drainage problems. Since irrigation water is no longer applied there would be reductions in the amount of subsurface drainage water produced. With less water moving through the soil profile, less leaching would occur, thereby reducing the amount of salts and other solids passing into the drain water. Other associated benefits would be the lowering of the water table, and opportunities to use the Project water, which was previously used on the retired lands, on other lands and to increase or enhance fish and wildlife resources, by changing the land use.

Public meetings were held in December 1993 and two 'Involved Parties' meetings were held in winter and spring 1994. In addition, presentations, and input and discussion meetings, were held with specific constituent groups such as the San Luis Delta-Mendota water users, San Joaquin Valley Drainage Implementation Program Management Group, Drainage Oversight Committee, and others. Draft interim guidelines were mailed to the involved parties list in early May, 1994. Few substantive comments resulted from this review of the preliminary draft.

II. OBJECTIVE

The objective of these Interim Procedures and Guidelines is to establish the process and selection criteria for the acquisition, from willing participants, of land and associated water rights, as authorized in Section 3408(h) CVPIA and Section 14900 CWC. This process is referred to as the Land Retirement program.

Both the State and Federal land retirement authorizations are based, in part, upon recommendations of the San Joaquin Valley Drainage Program. Therefore, in consideration of the similar objectives of the State and Federal statutes, the Department of the Interior and the State Department of Water Resources have agreed in concept to undertake a Joint Federal-State land retirement program. Such a joint program would avoid duplication and confusion, increase efficiency of both efforts, and maximize flexibility and versatility of the program.

Generally, a single pool of prospective applications would be evaluated, priorities set and both Federal and State resources then utilized, as available, to effect the greatest net benefit to the overall program

objectives. Therefore, these Interim Guidelines are designed to accommodate implementation of this joint program, covering both the Federal and State authorizing statutes, where practicable.

III. AUTHORITY

CENTRAL VALLEY PROJECT IMPROVEMENT ACT, PL 102-575, TITLE XXXIV

Section 3408(h)(1) authorizes the purchase, from willing sellers, of land and associated water rights and other property interests identified in paragraph (h)(2) which receives Central Valley Project water under a contract executed with the United States, and to target such purchases to areas deemed most beneficial to the overall purchase program, including the purposes of this title.

Section 3408 (h)(2) authorizes the Secretary to purchase, pursuant to such rules and regulations as may be adopted or promulgated to implement the provisions of this subsection, agricultural land which, in the opinion of the Secretary -

(A) would, if permanently retired from irrigation, improve water conservation by a district, or improve the quality of an irrigation district's agricultural wastewater and assist the district in implementing the provisions of a water conservation plan approved under section 210 of the Reclamation Reform Act of 1982 and agricultural wastewater management activities developed pursuant to recommendations specific to water conservation, drainage source reduction, and land retirement contained in the final report of the San Joaquin Valley Drainage Program (September 1990);

OR

(B) are no longer suitable for sustained agricultural production because of permanent damage resulting from severe drainage or agricultural wastewater management problems, groundwater withdrawals, or other causes.

SAN JOAQUIN VALLEY DRAINAGE RELIEF ACT, California Water Code(CWC), Section 14900

The State program as authorized by and described in CWC, Sect.14900, is to encourage cessation of irrigation on drainage-impaired lands and assist in the resolution of agricultural subsurface drainage problems in the San Joaquin Valley through the coordinated efforts of Federal, State and Local agencies, Non-profit organizations, and private landowners who elect to participate in the program.

Basic program elements. are:

The Department of Water Resources may acquire and manage drainage-impaired land, and acquire and transfer associated water.

The area of focus is the 75,000 acres referenced in the final report of the San Joaquin Valley Drainage Program (SJVDP), but could be anywhere in California.

The program must be self-supporting through the sale of conserved water.

The land acquired would be managed as habitat or non-irrigated agriculture.

One-third of the water conserved but not sold may be used by local agencies for environmental purposes or ground water recharge.

Distribution of conserved water must maximize amounts for environmental purposes.

IV. APPLICABILITY

These Interim Guidelines will be effective immediately and apply to the implementation of an interim program to retire irrigated agricultural lands which receive Central Valley Project water under a contract with the United States. This interim program pursuant to these Interim Guidelines will remain in effect until final rules and regulations for PL 102-575 are promulgated. However, as the interim land retirement program proceeds, these Interim Guidelines may be revised as necessary.

The applicability of these Interim Guidelines will not impede or restrict in any manner the execution of any land/and or water transaction between or among the United States, the State of California, or any person or entity.

V. PURPOSE

The purposes of the land retirement program are:

- A. Assist water districts in implementation of an approved water conservation plan, or improve the quality of an irrigation district's agricultural wastewater through drainage source reduction.
- B. Acquire water for purposes identified in the Central Valley Project Improvement Act and/or the San Joaquin Valley Drainage Relief Act.
- C. Protect, restore, and/or enhance fish and wildlife resources.

VI. ELIGIBILITY

GEOGRAPHIC AREA

Lands eligible for participation in this interim land retirement program are those that:

Receive Central Valley Project water under a contract executed with the United States (for participation under the Federal program)

OR

Are located in the drainage problem study area as defined in the final report of the San Joaquin Valley Drainage Program September, 1990. (for participation under the State program)

OFFERS

Offers will be considered from any and all landowners, groups of landowners, their duly authorized representatives and any combination thereof.

Offers involving multi-party arrangements must include all necessary parties legally capable of executing the terms of the offer.

TYPES OF TRANSACTIONS

Any and all types of transaction possibilities will be considered (fee acquisition, lease, lease-purchase, easement, etc.), provided the transaction meets the requirements for land retirement as specified in the Act.

VII. **PROCESS**

OVERVIEW

The program will be on a willing seller basis. Offers will be solicited by the land retirement team from willing sellers within the eligible area as described in section VI. A two-part process will be used to evaluate and select lands to be included in the interim land retirement program. Interested participants will be asked to submit an initial application form outlining the terms and conditions of the offer, and basic information needed to screen offers for eligibility and potential to meet goals of the program. The preliminary application will be as short and non-burdensome as possible, and require only basic information likely to be known or readily available to the landowner. The second part of the process will require more detailed information, and will be developed only for lands which might reasonably be considered.

A. Solicitation of Offers

A proactive effort to retire those lands which meet the priorities of the program and the objectives of the Act will be an ongoing process throughout the life of the program. Offers will be solicited by the land retirement team on a recurring basis, generally annually. An announcement will be made following determination of the currently available Federal and State funds for the land retirement program. The announcement will identify the period covered by the announcement, general land retirement program goals, the selection criteria, and instructions for those who wish to submit offers. Announcements will be mailed to landowners, local and State government agencies, and persons that have requested to be kept informed through general mail. The announcement will also be published through advertisements taken in newsletters through Farm Bureau, Water Districts, Drainage Districts, and/or through public newspapers. Applications will be accepted for a period of 60 days from the date of publication of the solicitation announcement. Applications received after this date will be considered in the next round.

B. Applications

Preliminary Application

Those interested in participating in the program will submit a non-binding application responsive to the criteria. The purpose of the preliminary application will be to 1) express interest in participating in the program, 2) identify under what terms and conditions the interest is based, and 3) provide sufficient information for a determination of eligibility and initial evaluation of the offer with respect to goals and objectives of the program.

Attachment 1 shows the minimum information that will be requested in the preliminary application phase. Return completed applications to Land Retirement Program Manager, USBR South-Central California Area Office, 2666 N. Grove Industrial Dr., Suite #106, Fresno, CA 93727.

C. Review

A review committee will be established consisting of State and Federal agency personnel with technical expertise and experience relative to the selection criteria. Upon the closing date for applications, this group will review the applications for eligibility and priority according to their potential to meet the purposes of the program. Applicants will be notified of the status of their application within 60 days of the closing date.

D. Preliminary Selection

Applications, once determined to meet the minimum eligibility criteria described above, will be evaluated and prioritized according to pre-determined criteria. Data and information utilized for evaluation will be provided by the applicant, and through State, Federal, or Water District data bases. The Selection Criteria Matrix is contained in the Appendix.

E. Confidentiality

Information about a particular transaction or potential transaction, including information about property owners involved and lands being considered for retirement, will be held in confidence by agency personnel (Federal and State) until negotiations about that particular transaction have been completed and a letter of intent has been signed. Information about applications that are not selected, potential transactions that do not progress to formal negotiations, and other discussions will also be held in confidence.

F. Notification

Applicants will be notified within 60 days of the close of the application period of the status of their applications. A supplemental information packet will be sent to those who have been selected to participate in the final process. This packet will contain instructions, requests for specific additional information, and a time line with mandatory response dates.

G. Final Review and Selection

Based upon the supplemental information packet provided by the landowner and upon the guidelines and purposes of the land retirement program, an assessment of the applications will be made and recommendations for selections will be made by the review committee and forwarded to management for approval. Upon approval, those selected parcel owners will be notified, and formal negotiations will be initiated. Qualified applicants who are not selected for participation in this round will automatically be placed on the list to be considered for the next solicitation event (unless the applicant requests otherwise).

VIII. RETIREMENT OF LAND

- A. Land to be retired under the Federal program shall be appraised by a Department of the Interior appointed appraiser, and shall include a hazardous materials inspection, according to the standards for such inspections set by the American Society for Testing and Materials, E-1527-97 & E-1528-96. Lands to be retired under the State program will follow a similar process.
- B. Lands found to contain hazardous wastes¹ are not eligible for lease or acquisition, unless the identified hazardous materials are removed and certified prior to public agency lease or purchase.
- C. All debt service against the land to be retired, shall be retired prior to, or as part of, any fee purchase agreement or included as part of the lease arrangements.
- D. Appropriate environmental review and documentation shall be prepared and completed prior to transaction closure.
- E. A post retirement land management plan shall be developed by the management agency or entity prior to retirement of a parcel of land. The post-retirement plan shall include, as necessary, consultation, coordination and review by other agencies and interested parties to ensure any potential adverse effects of post-retirement management are addressed.

IX. WATER MANAGEMENT

- A. All irrigation activities will cease, except for limited land management purposes which will not contribute to existing drainage problems.
- B. Water from retired land will not be used where it may contribute to existing agricultural drainage pollution problems, or other shallow groundwater related problems.
- C. Water acquired for fish and wildlife, or other purposes of this Act, through the interim land retirement program may be transferred for future use(s) on lands outside the District in which the acquired land is located in accordance with CVPIA sections 3406(b)(3), water acquisitions and 3405(a), water transfers.

X. DEFINITIONS

As used herein, the term:

“Act”

means Title XXXIV of Public Law 102-575, known as the “Central Valley Project Improvement Act” or CVPIA.

“Agricultural Land”

means those lands which are utilized to grow a marketable crop of botanical or biological nature, and are not used for Municipal or Industrial use.

“Drainage water”

Surplus water removed from within the soil by natural or artificial means, such as by drains placed below the surface to lower the water table below the root zone.

1. Environmental Protection Agency’s publication entitled *National Priorities List Fact Book* (December 1992) and supplements, which identify hazardous waste sites requiring cleanup under the “Superfund” law.

- “Easement”
means an interest in land owned by another that entitles its holder to a specific limited use
- “Fee acquisition”
means purchase of land in complete title with the associated rights.
- “Interim Program”
means the time period between the initiation of the land retirement program and that time when the PEIS has been accomplished and final rules and regulations have been promulgated.
- “Irrigation Water”
means Project Water to be used for agricultural purposes as set forth in the Water Contractor’s Water Service, Repayment or Water Right Settlement Contract.
- “Land Retirement”
means cessation of irrigation upon a parcel of land.
- “Lease”
Negotiated contract granting use of the land for a specified period and for a specified amount.
- “Lease-purchase”
means a negotiated contract granting use of the land for a specified period and for a specified amount, which includes an option to purchase (fee title) in a given time period.
- “Multi-party” arrangement
refers to land acquisition/lease proposals with more than one landowner of record, such as a partnership, deeds held in Trust, etc...All legal owners (those legally capable of executing the terms of the offer) must sign the offer.
- “Municipal and Industrial Water”
means Project Water to be used for other than agricultural purposes as set forth in the Water Contractor’s Water Service, Repayment or Water Rights Settlement Contract.
- “Project”
means the Central Valley Project, California
- “Project Water”
means water that is developed, diverted, stored or delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water rights acquired for the Central Valley Project pursuant to California law.
- “San Joaquin Valley Final Report” (SJVDP final report)
means the final report of the San Joaquin Valley Drainage Program dated September 1990. (a.k.a. the “rainbow report”).
- “Secretary”
means the Secretary of the Interior, or his designee.

“Wastewater”

refers to agricultural drainage wastewater, commonly collected in subsurface collector drains in shallow water tables and transported via ditches and canals to evaporation ponds or streams.

“Water Conservation Plan” (WCP)

refers to the water conservation plan as developed in accordance with provisions of the Reclamation Reform Act (RRA) and CVPIA by the CVP water contracting district in which that parcel is located.

“Water Contractor”

shall mean any entity or individual who is a party to a Water Service Contract, a Repayment Contract or a Water Rights Settlement Contract with the United States for a Project Irrigation and/or Municipal and Industrial Water supply, which may be supplemental to a non-Project water supply, pursuant to Section 9 of the Reclamation Project Act of 1939, as amended and supplemented.

“Water Districts”

refers to water contractors.

Water Service Contract”

means a contract with the United States providing Project Water pursuant to subsections (c)(2) and/or (e) of Section 9 of the Reclamation Project Act of 1939, including Water Rights Settlement Contracts which provide for the delivery of supplemental Project Water.

XI.APPENDIX

**CVPIA LAND RETIREMENT PROGRAM
PRELIMINARY APPLICATION**

(A SEPARATE APPLICATION MUST BE FILLED OUT FOR EACH PARCEL OR BLOCK OF LAND)

Purpose of Retirement (eligibility for): Water Conservation (), Drainage (), Other ()

1. Owners Name _____ Phone # () - _____
Address _____, City _____, St. _____, Zip _____

2. Location of Acreage : APN # _____
Address _____
County _____ Township _____ Range _____ Section _____ Meridian _____

Attach Parcel map to this form.

3. Total Asking Price \$ _____, Per Acre \$ _____
water allocation included? (yes / no)

Terms: _____

(use reverse-side for additional space)

4. Number of Acres _____ 5. Water District _____

6. Water Allocation _____ ACRE FEET total _____, or per acre _____ explain: _____

7. Crop History: (identify crop and production, dry pasture or fallow for past 10 years)

- Year 1 Crops _____ Production per Acre _____
- Year 2 Crops _____ Production per Acre _____
- Year 3 Crops _____ Production per Acre _____
- Year 4 Crops _____ Production per Acre _____
- Year 5 Crops _____ Production per Acre _____
- Year 6 Crops _____ Production per Acre _____
- Year 7 Crops _____ Production per Acre _____
- Year 8 Crops _____ Production per Acre _____
- Year 9 Crops _____ Production per Acre _____
- Year 10 Crops _____ Production per Acre _____

Has parcel been idled more than 4 years? (yes/no)

8. Drainage History:

Method of Irrigation (circle all that apply) Sprinkler Flood Furrow Drip Comb.
Wells on Property? (yes / no), Depth of Wells _____ Depth to useable water _____
Collector drains? (yes / no), Depth to shallow ground water table _____

9. Please note any other features that may add value on the back of this application

(e.g. House, Barns, Outbuildings, Wildlife / Wetland Compatibility, Cost savings of drainage cleanup, etc.)

Signature: _____ Date: ____ / ____ / ____

Return this form to: Land Retirement Program Manager, USBR SCCAO, 2666 N. Grove Industrial Dr., #106, Fresno, CA 93727

| | | |
|---------------------------------------|-----------------|--------------|
| Does parcel receive CVP water? | Y | N |
| Drainage Reduction | Max Pts: | Score |
| Depth to Groundwater | | |
| 0-5 ft. | | |
| 5-10 ft. | | |
| >10 ft. | | |
| Selenium | | |
| > 200 ppb | | |
| 50-200 ppb | | |
| 20-50 ppb | | |
| 5-20 ppb | | |
| Salinity(e.c.) | | |
| >10 dS/m | | |
| 5-10 dS/m | | |
| 2.5-5 dS/m | | |
| >0-2.5 dS/m | | |
| Boron | | |
| > 8ppm | | |
| 2-8 ppm | | |
| 0-2 ppm | | |
| Soil Drainage Class | | |
| Poorly Drained | | |
| Moderately Drained | | |
| Well Drained | | |
| Other | | |
| As > 10 ppb | | |
| Mo > 10 ppb | | |
| Totals for Drainage Reduction: | | |

| Fish & Wildlife | Max pts: ____ | Score: ____ |
|---|----------------------|--------------------|
| Risk of Exposure to contaminated waters | | |
| Active drain to SJR/pond | | |
| Potential drain to SJR/pond | | |
| No drains | | |
| Parcel Size | | |
| Parcel size | | |
| Parcel location | | |
| Parcel is within 1 mile of managed habitat | | |
| Parcel is between 1-5 miles of managed habitat | | |
| Parcel is located contiguous to river or perennial stream, or within its historical floodplain | | |
| Retirement of parcel will assist in implementation of current habitat management/recovery/conservation plans (corridor concept) | | |
| Geographic relationship of parcel to other parcels in applicant pool | | |
| Parcel is >5 miles from urban development or high-use facilities | | |
| Totals for Fish & Wildlife Enhancement: | | |

| Acquisition of Water for CVPIA Purposes | Max pts: ____ | Score: ____ |
|--|----------------------|--------------------|
| Entire water district (assignment of water contract) | | |
| Amount of water available for acquisition | | |
| Totals for Acquisition of Water: | | |

| | |
|--------------------------|--|
| TOTALS | |
| Maximum possible points | |
| Applicant's score | |

Instructions for using Ranking Criteria

Does Parcel Receive CVP water? (Y/N) This is to document eligibility of parcel for the land retirement program, per requirements of sect. 3408(h), CVPIA.

Drainage Reduction

Depth to Groundwater taken from San Joaquin Valley Drainage Program Final Report, 1990 dataset, or most current GIS data

Selenium--same

Salinity--same

Boron--same

Soil Drainage Class--obtained from NRCS.

Other--As, Mo obtained from GIS dataset listed above

Fish & Wildlife

Risk of Exposure to contaminated waters: in order to factor in the risk of contaminant exposure to wildlife from such things as selenium, arsenic, etc., we need to know the pathway of the drainage and irrigation tailwater and the ultimate destination of these waters.

Parcel Size: simply multiply the acres available by 0.01 , capped at 50 pts.

Parcel Location

Parcel within 1 mile of managed habitat: managed habitat is defined as lands in public ownership or a private preserve, managed for native species

Parcel is between 1-5 miles: using definition of managed habitat, use GIS map to locate proximity of parcel to other managed habitat.

Parcel is located contiguous to river or perennial stream, or within its historical floodplain: using GIS dataset and floodplain maps, determine location of parcel relative to this criterion. Criterion is important because riparian habitat is rare.

Retirement of parcel will assist in implementation of current habitat

management/recovery/conservation plans (linkage concept): flexibility is needed here to obtain parcels that are key linkages to complement other program efforts. Determination of parcel importance includes such things as threatened and endangered species, and other wildlife values.

Geographic relationship of parcel to other parcels in applicant pool: Using GIS map, compare location of offered parcel to other parcels in the applicant pool, previously selected lands, managed public lands, etc.. to form "linkages", and larger block sizes.

Parcel is >5 miles from urban development or high-use facilities: urban development is defined as areas with populations of 20,000 or more. High-use facilities are defined as those that have created major land disturbance activities and are operated on a daily or continual basis. Major land disturbance activities may include borrow pits, sand and gravel operations, airports, freeway interchanges, etc..

Acquisition of Water for CVPIA Purposes:

Entire water district (assignment of contract)--if able to purchase the entire water district, the purchaser assumes control of the water contract and can easily move water elsewhere, such as to refuges, in accordance with CVPIA, section 3405(a)(1) and (2) water transfers. Assumption of the contract is of great benefit as it locks up a stable supply of water (no allocation uncertainties), may reduce long-term operation and maintenance costs and debt-load issues, which may improve water management and conservation in accordance with CVPIA, section 3405, Water Transfers, Improved Water Management and Conservation.

Amount of water available for acquisition:--multiply acre-feet offered by 0.01 per acre-foot.