

## Implementation of Section 4011, Water Infrastructure Improvements for the Nation (WIIN) Act, Public Law 114-322

### Frequently Asked Questions (Update as of May 23, 2019)

#### What is the WIIN Act?

Congress passed the WIIN Act legislation on December 16, 2016, with a sunset date of December 16, 2021. The WIIN ACT is comprehensive legislation relating to water infrastructure at several Departments. Subtitle J “California Water” in the legislation is specific to Reclamation. Section 4011 of Subtitle J outlines the authority and direction provided to the Secretary for the following:

- Conversion and prepayment of current water service contracts executed under Section 9 (c) (2) and 9 (e) of the 1939 Reclamation Project Act (1939 Act).
- Prepayment of obligations under contracts executed in accordance with Section 9(d) of the 1939 Act, also referred to as Existing Repayment Contracts.
- Repayment, in either a lump sum or by accelerating prepayment, of the remaining construction costs obligations. Obligations will be discounted by ½ the Treasury Rate. Irrigation contractors may elect either lump sum or accelerated prepayment while municipal and industrial contractors may only pay in lump sum.

Section 4011 of Subtitle J also requires that a specified portion of the receipts generated from such prepayment be directed to the Reclamation Water Storage Account to fund the construction repayment of new water storage projects.

#### Where Can the Most Current WIIN Act Information be Found?

The most current WIIN Act Section 4011 information can be found on the Reclamation Mid-Pacific Region WIIN Act website at <https://www.usbr.gov/mp/wiin-act/>.

#### What is Significance of the December 16, 2021, Date?

The WIIN Act authority and direction for water service contract conversions to repayment contracts sunsets December 16, 2021, which means Reclamation and the Contractors must have the repayment contracts negotiated and executed prior to the December 16, 2021 sunset date. In other words, neither the Commissioner nor the Mid-Pacific Region will have authority to negotiate or execute repayment contracts under the governing legislation after December 16, 2021.

#### “SEC. 4013. DURATION.

This subtitle shall expire on the date that is 5 years after the date of its enactment...”

Therefore, Reclamation has identified that all repayment contracts must be signed by the contractor and provided to Reclamation no later than forty-five (45) days prior to the sunset date. This is dependent on the number of signed contracts Reclamation receives and resources available to manage the contract execution process, as well as Reclamation's goal to execute all signed conversion contracts.

### **When Does Reclamation Anticipate Initiating the Contract Conversions?**

In February 2018, Reclamation began implementation of the WIIN Act by traveling and educating contractors throughout the Central Valley Project. The first CVP-wide public negotiation session will be held on May 29 and 30, 2019.

May 29, 2019, from 10:00 a.m.–3:30 p.m., May 30, 2019 from 9:00 a.m.–3:30 p.m., McClellan Conference Center 5411 Luce Ave McClellan Park, CA 95652. After arriving at a mutually agreeable contract, Reclamation and the participating contractors will progress to the Division, Unit, and Contractor-specific level of negotiations.

### **Are the Contractors Able to Make Changes to the Contract Before Conversion?**

Water Service Contracts in effect as of December 16, 2016, are eligible for conversion. Changes to these contracts are limited by the WIIN Act:

Section 4011 - Offsets and Water Storage Account, Subsection (1), Conversion and Prepayment of Contracts - Upon request of the contractor, the Secretary of the Interior shall convert any water service contract **in effect** on the date of enactment of this subtitle.... (emphasis added)

### **What is a Non-discretionary Action?**

A non-discretionary action is an action that is not subject to or influenced by someone's discretion, judgment, or preference. A non-discretionary law is a law that is enforced absolutely, and not at the discretion of authorities.

### **Will the Contractual Process Change?**

No. Contractual processes such as, but not limited to, detachment and annexation will continue to have the same contractual obligations; the process to perform those will remain the same. Repayment contracts will be negotiated with each district/agency's appointed representative(s). There is a 60-day public comment period for negotiated contract prior to signature and execution.

### **What is the Process for Prepayment under the WIIN Act?**

Reclamation's Mid-Pacific Regional Director is executor of the prepayment contracts; Regional and Area Office staff will negotiate and later administer the prepayment contracts. Each participating contractor will have prepayment schedule(s) as exhibit(s). Upon execution, the repayment contracts will have payment due dates indicating the period of payment for each executed repayment contract. Repayment contracts will be negotiated, signed, and administered consistent with Federal Law, Reclamation Manual-Policy, and Reclamation Manual-Directive and Standards.

### **What is the Effect on the Reclamation Reform Act of 1982 (RRA)?**

Once contractors fully repay their construction obligation they are no longer subject to the requirements of the RRA. Contractors will receive a letter verifying full payout and approval by Reclamation's Director of Policy and Administration. Contracts for new obligations (i.e. Safety of Dams, Extraordinary Maintenance, etc.) will not be subject to the requirements of the RRA. However, if the contractor has existing financial obligations, such as, but not limited to, 9(d) loans that are subject to the requirements of the RRA, the contractor will not be exempt from RRA until those financial obligations are paid in full.

### **When does Reclamation Issue an RRA Exemption Letter?**

Once repayment contracts are negotiated, a final RRA review will be conducted. Any financial issues identified in the review must be resolved prior to final payment. Upon final payment, contractors should receive an RRA exemption letter within 6 weeks.

### **Are the Standard Articles Negotiable?**

The inclusion of Standard Articles in contracts as directed by Reclamation Manual Policy at PEC-P10 and Reclamation Manual-Directive and Standards at PEC 10- 01, et seq., is generally not negotiable.

### **Where can I find Reclamation Manual PEC-10?**

Information regarding PEC-P10 can be found at <https://www.usbr.gov/recman/pec/pec-p10.pdf>

### **How Long After Negotiations of the Mutually Agreeable CVP-wide Conversion Contract Template Should We Expect to Begin Division, Unit, and Contractor-specific Levels Negotiations?**

Upon Reclamation and the contractors reaching agreement on a CVP-wide form of Conversion Contract Template, the Area Offices may initiate locally-managed public negotiations. Reclamation predicts the next phase of negotiations at the Division, Unit, and Contractor specific levels of negotiation may begin as early as 30 to 60 days after reaching agreement on the template form of contract.

### **How Long After Negotiating a Repayment Contract Does it Take to See a Fully Executed Contract?**

Typically, it takes approximately six (6) to eight (8) weeks after a contract is negotiated and after the sixty (60) days public comment period ends.

Contract negotiations will be conducted in a manner that provides opportunities for the public to observe and provide meaningful input. Contract negotiations will be in strict compliance with subsection 9(f) of the Reclamation Act of 1939 (Pub. L. 76-260, as amended by section 226 of Pub. L. 97-293; 43 USC 485h(f)) and with 43 CFR 426.22). See also Reclamation Manual-Policy, Public Involvement in Reclamation Manual-Policy Activities (CMP P03), and Reclamation Manual-Directive and Standards, Public Involvement in Reclamation Activities (CMP 04- 01).

### **To Whom Should Questions Regarding WIIN Act be Directed?**

Please direct questions to any WIIN Act technical team members identified on the point of contacts available at the WIIN Act Implementation website <https://www.usbr.gov/mp/wiin-act/> also provided on the following page 4 of 4.

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