

RECLAMATION

Managing Water in the West

New Mexico Pueblo Irrigation Infrastructure Project



U.S. Department of the Interior
Bureau of Reclamation

Outline

- Funding
- Pueblo Irrigation Project History
- Pueblo Irrigation Project Authorization--Section 9106, Omnibus Public Land Management Act of 2009
- Moving forward

Reclamation project funding vs. BIA funding

- BIA

- Discretionary Authority of the Secretary to conduct studies and construction
- Most types of projects authorized

- BOR

- Water resource related projects
- Project or program driven
- Congress must authorize and fund each project.
- Authorization does not guarantee funding.

Reclamation project funding vs. BIA funding

•BOR

- Four different project phases
- Authorization vs. appropriation

Project Phase	Congressional Authorization Required?	Congressional Appropriation Required?
Planning/Appraisal Level	Not specifically (Already given)	Not specific for project (general planning funds)
Feasibility	Yes	Yes
Design and Construction	Yes	Yes
Operation and Maintenance	Yes	Yes

BOR Project Funding

- **Project funding must pay for BOR staff salaries, NEPA, contract administration, etc.**
 - BOR does not have general funding to pay for project costs, including overhead.
 - Many BOR projects are actually reimbursable; this is not the case with the Pueblo Irrigation Infrastructure Project.
- **Reclamation cannot lobby Congress for funding.**

BOR Funding—Current Status

- **Reclamation cannot move funds into a project that Congress has not already funded**
 - **Reclamation cannot move funds internally to fund the Pueblo Irrigation Project until Congress begins funding it.**
 - **Reclamation is able to move money into the Native American Affairs Program. The Native American Affairs Program can provide technical assistance.**

BOR Funding—Current Status

- Reclamation has \$50,000 in Native American Program funding to provide technical assistance.
- Reclamation has identified another \$300,000 in funds that were originally in the planning program budget.
- Reclamation proposes moving it from the planning program to the Native American Program to provide technical assistance.

BOR Funding—Current Status

- This \$300,000 is still not available for technical assistance.
- Compared with the need, moving funds internally is not a good option.

BOR Funding—Current Status

- Outlook for FY 2011 budget

Pueblo Irrigation Project History

- Chris Kenney, Native American Program Head, Washington, DC
- Secretary of the Interior's national consultation with Indian Tribes, July 1998
- Eluid Martinez, Commissioner of Reclamation, and U.S. Senator Pete Domenici (Reclamation budget subcommittee chair)
 - “Big” report
 - “Little” report
- John Keys, Commissioner of Reclamation
- Pueblo efforts
- Senator Jeff Bingaman and Michael Connor
- Reclamation Position

Pueblo Irrigation Project History

•Background

- Overappropriated Rio Grande
- Adjudication/settlement has not begun on the middle Rio Grande; in progress on some tributaries
- Endangered Species
- Fear of effect of senior Indian water rights; New Mexico is a prior appropriation state.
 - In general, non-Indian irrigation is junior to Indian water rights (based on old Spanish land grants and Spanish/Mexican law)
 - Municipalities, industries are junior to most other users
- Concern over effects of Indian water rights on Rio Grande Compact

Pueblo Irrigation Project History

- The “Big” Report

- The “Little” Report

 - Executive Summary

 - 1.0 Introduction

 - 2.0 Need

 - 2.1 Current Condition

 - 2.2 Scope of Work

 - 3.0 Recommended Solution

 - 3.1 Pueblo Resources

 - 3.2 Other Government Agencies

 - BIA

 - NRCS

 - COE

 - BOR

Pueblo Irrigation Project History

- The “Little” Report (continued)

 - 4.0 Funding Requirements

 - 4.1 Feasibility Study

 - 4.2 Construction

 - 4.3 Preliminary Construction Estimate

 - 5.0 Legal and Institutional Issues

 - 5.1 Trust Responsibility

 - 5.2 The Leavitt Act and Repayment Obligations

 - 5.3 The Middle Rio Grande Conservancy District

 - 5.4 Water Rights

 - 5.5 Environmental Compliance

 - 5.6 Prioritization of the Work

 - 5.7 Indian Self-Determination and Education Assistance Act (P.L. 93-638 As Amended)

 - 6.0 Conclusion

Pueblo Irrigation Project History

Main differences in report, comments on draft versions of Act and final version of Act:

- Laser leveling not included (on-farm improvements that result in water conservation)
- Historically irrigated vs. currently irrigated
- Facility based vs. land based
- Construction funding begins at same time as study funding

Pueblo Irrigation Infrastructure Project Authorization

**Section 9106, Omnibus Public Land
Management Act of 2009**

Section 9106, O.P.L.M. Act of 2009

(a) Findings and Purpose.—

(1) Findings

- (A) Drought, population increases, environmental needs exacerbating water supply issues
- (B) “Little” report identified Pueblo irrigation infrastructure needs
- (C) Facilities unsafe and barely, if at all, operable

Section 9106, O.P.L.M. Act of 2009

(a) Findings and Purpose.—

(1) Findings (continued)

(D) Benefits of rehabbing and repairing Pueblo irrigation infrastructure:

(i) Water conservation

(ii) Extend available water supplies

(iii) Increased agricultural productivity

(iv) Economic benefits

(v) Safer facilities

(vi) Pueblo cultural preservation

(E) Some Pueblos receive water from facilities operated or owned by Reclamation

Section 9106, O.P.L.M. Act of 2009

(a) Findings and Purpose.—

(1) Findings (continued)

- (F) Rehab and repair would improve:
 - (i) Overall Reclamation water management
 - (ii) Reclamation's ability to address potential water supply conflicts in Rio Grande Basin

(2) Purpose—Direct Secretary to

- (A) Assess condition of Pueblo irrigation infrastructure
- (B) Establish priorities for rehab in accordance with specified criteria
- (C) Implement projects to rehab and repair

Section 9106, O.P.L.M. Act of 2009

(b) DEFINITIONS

- (1) 2004 AGREEMENT
- (2) DESIGNATED ENGINEER
- (3) DISTRICT
- (4) PUEBLO IRRIGATION INFRASTRUCTURE—any diversion structure, conveyance facility, or drainage facility that is
 - (A) in existence as of the date of enactment of this Act;
 - (B) located on land of a Rio Grande Pueblo associated with
 - (i) delivery of water for irrigation of agricultural land
 - (ii) the carriage of irrigation return flows and excess water from the land that is served

Section 9106, O.P.L.M. Act of 2009

(b) DEFINITIONS (CONTINUED)

- (5) RIO GRANDE BASIN
- (6) RIO GRANDE PUEBLO
 - (A) Within Rio Grande Basin (18)
 - (B) Federally recognized tribe
- (7) SECRETARY—acting through Commissioner of Reclamation
- (8) SIX MIDDLE RIO GRANDE PUEBLOS
- (9) SPECIAL PROJECT
- (10) STATE—means New Mexico

Section 9106, O.P.L.M. Act of 2009

(c) IRRIGATION INFRASTRUCTURE STUDY

(1) STUDY

(A) IN GENERAL

- (i) Conduct study
- (ii) Develop a list of projects, including cost estimates

(B) REQUIRED CONSENT

- (i) Pueblo has to consent to participate in study
- (ii) Pueblo has to consent to develop list of projects

Section 9106, O.P.L.M. Act of 2009

(c) IRRIGATION INFRASTRUCTURE STUDY (CONTINUED)

(2) PRIORITY

(A) CONSIDERATION OF FACTORS

(i) IN GENERAL—In developing list of projects:

(I) Must consider factors below (subparagraph B)

(II) Prioritize recommended projects based on

(aa) Review of factors

(bb) Projected benefits of the project on completion of the [overall] project

Section 9106, O.P.L.M. Act of 2009

(c) IRRIGATION INFRASTRUCTURE STUDY (CONTINUED)

(2) PRIORITY

(B) FACTORS (CONTINUED)

(i) Disrepair

(I) Extent of disrepair

(II) Effect of disrepair on ability of the applicable Pueblo to irrigate agricultural land

(ii) If repair would conserve water

(iii)

(I) Economic and cultural impact of disrepair

(II) Economic and cultural impact of repair

Section 9106, O.P.L.M. Act of 2009

(c) IRRIGATION INFRASTRUCTURE STUDY (CONTINUED)

(2) PRIORITY

(B) FACTORS (CONTINUED)

(iv) Address water supply or environmental conflict through repair

(v) Overall benefits to efficient water operations on Pueblo

Section 9106, O.P.L.M. Act of 2009

(c) IRRIGATION INFRASTRUCTURE STUDY (CONTINUED)

(3) CONSULTATION – In developing list of projects, the Secretary shall consult with BIA, NRCS, COE to see if their programs may be used:

(A) To assist in evaluating projects

(B) To implement

(i) a project recommended for implementation

(ii) any other related project, including on-farm improvements to improve basin-wide water use efficiency

Section 9106, O.P.L.M. Act of 2009

(c) IRRIGATION INFRASTRUCTURE STUDY (CONTINUED)

- (4) Report – Begin on date of enactment of Act (March 30, 2009), submit report by March 30, 2011
 - (A) Include list of projects recommended for implementation
 - (B) Any findings of the Secretary with respect to
 - (i) the study
 - (ii) consideration of factors under paragraph (2)(B)
 - (iii) the consultations
- (5) PERIODIC REVIEW – Report back to Congress every 4 years after study report
 - (A) Review study report
 - (B) Update list of projects

Section 9106, O.P.L.M. Act of 2009

(d) IRRIGATION INFRASTRUCTURE GRANTS

- (1) **IN GENERAL --** The Secretary may provide grants to and enter into contracts or agreements with Pueblos to plan, design, construct, or otherwise implement projects--
 - (A) To increase water use efficiency and agricultural productivity
 - (B) To conserve water
 - (C) To otherwise enhance water management or help avert water supply conflicts
- (2) **LIMITATION –** No assistance for:
 - (A) Major impoundment structures
 - (B) On-farm improvements

Section 9106, O.P.L.M. Act of 2009

- (d) **IRRIGATION INFRASTRUCTURE GRANTS (CONTINUED)**
 - (3) **CONSULTATION – In carrying out a project, the Secretary shall**
 - (A) **Consult with and obtain approval of the Pueblo**
 - (B) **Consult with the BIA**
 - (C) **Coordinate the project with any work being conducted under the irrigation O&M program of the BIA**

Section 9106, O.P.L.M. Act of 2009

(d) IRRIGATION INFRASTRUCTURE GRANTS (CONTINUED)

(4) COST-SHARING REQUIREMENT

(A) FEDERAL SHARE

- (i) IN GENERAL – Not more than 75%
- (ii) EXCEPTION – Secretary may waive or limit cost share based on determination of financial hardship by Pueblo

(B) DISTRICT CONTRIBUTIONS

- (i) IN GENERAL – District may contribute a non-Federal cost share for a project on lands of the six Middle Rio Grande Pueblos if the Secretary determines that the project is a special project
- (ii) EXCEPTION – District not required to cost share

Section 9106, O.P.L.M. Act of 2009

- (d) IRRIGATION INFRASTRUCTURE GRANTS (CONTINUED)**
 - (4) COST-SHARING REQUIREMENT (continued)**
 - (C) STATE CONTRIBUTIONS**
 - (i) IN GENERAL – The State may contribute to the non-Federal cost share**
 - (ii) EXCEPTION – The State is not required to cost share**
 - (D) FORM OF NON-FEDERAL SHARE**
 - (5) OPERATION AND MAINTENANCE – not with funding provided by this Act**

Section 9106, O.P.L.M. Act of 2009

- (e) EFFECT ON EXISTING AUTHORITY AND RESPONSIBILITIES**
 - (1) No effect on existing project-specific funding authority**
 - (2) Does not limit or absolve the U.S. from any responsibility to any Pueblo (including trust responsibility, Federal law, regulations, Executive order, or agreement between the Federal Government and any Pueblo)**

Section 9106, O.P.L.M. Act of 2009

- (f) EFFECT ON PUEBLO WATER RIGHTS OR STATE WATER LAW**
 - (1) PUEBLO WATER RIGHTS -- No effect on the right of any Pueblo to receive, divert, store, or claim a right to water, including the priority of right and the quantity of water associated with the water right under Federal or State law.**
 - (2) STATE WATER LAW – NOTHING IN THIS SECTION PREEMPTS OR AFFECTS--**
 - (A) State water law**
 - (B) an interstate compact governing water**

Section 9106, O.P.L.M. Act of 2009

(g) AUTHORIZATION OF APPROPRIATIONS

- (1) Study—“There is authorized to be appropriated . . . \$4,000,000”
- (2) Projects – “There is authorized to be appropriated . . . \$6,000,000 for each of fiscal years 2010 through 2019.”

Moving Forward

With the currently available funding, Reclamation is working on the following coordination activities

- In accordance with the Act, work with the BIA, NRCS, and USACE.
- Continue working with the BIA to review existing BIA information on Pueblo irrigation facilities.
- Transmit letter to the 18 Rio Grande Pueblos to obtain their consent to:
 - Participate in the study.
 - Develop the list of projects for implementation.

Moving Forward

- Reclamation and BIA (and possibly other agencies) will work closely with the Pueblos, individually and collectively, on workload planning, technical, and prioritization tracks:
 - WORKLOAD PLANNING: Determine how to proceed for completion of the study, i.e., through 638 contracts, BIA or Reclamation staff, role of Pueblo staff, etc.
 - Determine funding needed and time required for report completion.
 - Decide which tasks should be postponed until the construction phase, such as very expensive data collection, environmental compliance, etc.

Moving Forward

- TECHNICAL: Investigate potential individual Pueblo projects
 - Obtain existing Pueblo reports and information on irrigation systems and conduct on-site visits.
 - Discuss which projects meet the criteria established in the legislation
 - Discuss the design data collection needed, including surveying, flow and hydrological measurements, geotechnical investigations, operational issues, maintenance issues, etc.
 - Discuss alternative approaches to meet Pueblo needs.
 - Discuss programs offered by other agencies.
 - Discuss environmental, cultural resource, and other issues for each project.

Moving Forward

–PRIORITIZATION: Work with the Pueblos on developing criteria for prioritizing projects

- Help Pueblos prioritize their projects based on legislative requirements.
- Develop other criteria for prioritizing projects which will be agreed to by all Pueblos.
- Decide how to proceed in the event of limited or incomplete funding to accomplish items of work, how to proceed in the event of cost overruns, etc.
- Discuss Pueblo cost share or hardship requests.
- Possibly come up with a list of prioritized projects among all Pueblos.
- Possibly come up with a report to submit to Congress which will be lacking in the detail requested by Congress.

Moving Forward

- **With additional funding that may become available, Reclamation could:**
 - Obtain design data
 - Prepare designs and cost estimates
 - Work with the Pueblos on prioritizing projects to be recommended to Congress for implementation.
 - Prepare the draft report to Congress with the list of projects recommended for implementation (Pueblos, Reclamation, and BIA)

Moving Forward

- **With additional funding that may become available, Reclamation could (continued):**

- Contingent upon availability of appropriations, the Regional Director, Reclamation will submit the draft report to the Commissioner in late 2010 or early 2011 for processing through the Department of the Interior and the Office of Management and Budget.

- Contingent upon availability of appropriations, the study report will be transmitted to the Senate Committee on Energy and Natural Resources and the House Committee on Resources on or before March 30, 2011 in accordance with the legislation, unless a decision is made to delay transmission of the report.

Moving Forward

- The following are things we can be working on
 - Return your consent form if you haven't already.
 - The Pueblos can come up with a list of projects needed at your respective Pueblo.
 - Make available older reports, plans already completed.
 - Prioritize projects within your Pueblo.
 - Decide how you want to handle prioritizing between Pueblos
 - Committee of Pueblo representative?
 - Come up with criteria for prioritizing over and above legislative requirements?
 - Have Pueblo committee be part of field trips to each Pueblo?
 - Other

Moving Forward

- The following are things we can be working on (continued)
 - Reclamation can get solicitor’s opinions as needed on uncertainties in the legislation.
 - Reclamation and BIA can tour Pueblo projects to become familiar with Pueblo needs.
 - Reclamation and BIA can go through existing reports and studies on Pueblo irrigation.
 - Reclamation and BIA can offer technical expertise, other possible solutions.
 - Explore other funding opportunities, especially with the NRCS.
 - Other

New Mexico Pueblo Irrigation Infrastructure Project

Thank you!

For more information contact

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