

ABSTRACT

Objective and Authority

To develop interim Guidelines for the calculation, assessment, collection and crediting of payments and charges to be paid by Central Valley Project (Project) water and power beneficiaries as required by subsections 3404(c)(3), 3405(d), 3405(a)(1)(B), and 3406(c)(1), and Section 3407 of Title 34 of Public Law 102-575. The incremental revenues collected as a result of the requirement to pay these payments and charges shall constitute the Project Restoration Fund (hereafter referred to as the Restoration Fund) and are to be used by the Secretary of the Interior (Secretary) as required by Title 34.

The Restoration Fund

The Bureau of Reclamation has established the Restoration Fund account in which to deposit and record the receipt of monies appropriated by Congress to carry out the programs, projects, plans, and wildlife restoration, improvement and acquisition provisions of Title 34.

Deposits

All incremental revenues collected as a result of the requirement to pay Pre-Renewal Charges [subsection 3404(c)(3)], Tiered Water Rates [subsection 3405(d)], Transferred Water Rates [subsection 3405(a)(1)(B)], Friant Surcharges [subsection 3406(c)(1)], Municipal and Industrial Surcharges [subsection 3407(d)(2)(A)] (herein collectively referred to as the Non-Discretionary Payments), Mitigation and Restoration Payments [subsection 3407(d)(2)(A)] (hereafter referred to as Discretionary Payments), which are to be assessed and collected annually¹ by Reclamation, and all Non-Federal Contributions [subsection 3407(a)], if any, which are received to advance the specific purposes of Title 34, will be deposited into the Restoration Fund.

~~The other principal source of funds—referred to in the Interim Guidelines as Restoration Payments [subsections 3407(c) and (d) (and sometimes referred to as Discretionary Payments)]—cannot be collected, at least through fiscal year 1997, absent Congressional appropriations. If the total amount appropriated on an annual average basis by Congress following enactment of Title 34 does not equal \$50 million (October 1992 price levels), the Secretary shall—as may be limited by the various provisions of subsection 3407(d) of Title 34—automatically impose Restoration Payments in each year thereafter sufficient to provide for the annual collection of \$50 million (October 1992 price levels). The later action will change the Restoration Payments from Discretionary Payments to Non-Discretionary Payments.~~

Diagram 1 Illustrates the relative relationship of the Discretionary Payments, Non-Discretionary Revenues and Non-Federal Contributions, if any, to the Restoration Fund.

Authority to Use Funds

Restoration Funds to carry out the provisions of Title 34 are made available ~~into~~ two ways.

1. Non-Federal Contributions for a specific purpose are available for expenditure without Congressional action. These funds can only be expended for the expressed purposes of the

¹ Consistent with Title 34, Pre-Renewal Charges will not be assessed and collected until certain conditions are met. See Part C of these ~~Interim~~ Guidelines.

contributions and, in contrast to the Discretionary Payments and Non-Discretionary Revenues, are not subject to appropriation.

- 2.—All remaining funds (which can vary from \$0 to as much as \$50 million annually) (October 1992 prices) are made available by Congress through appropriations for use by the Secretary to carry out the provisions of Title 34.

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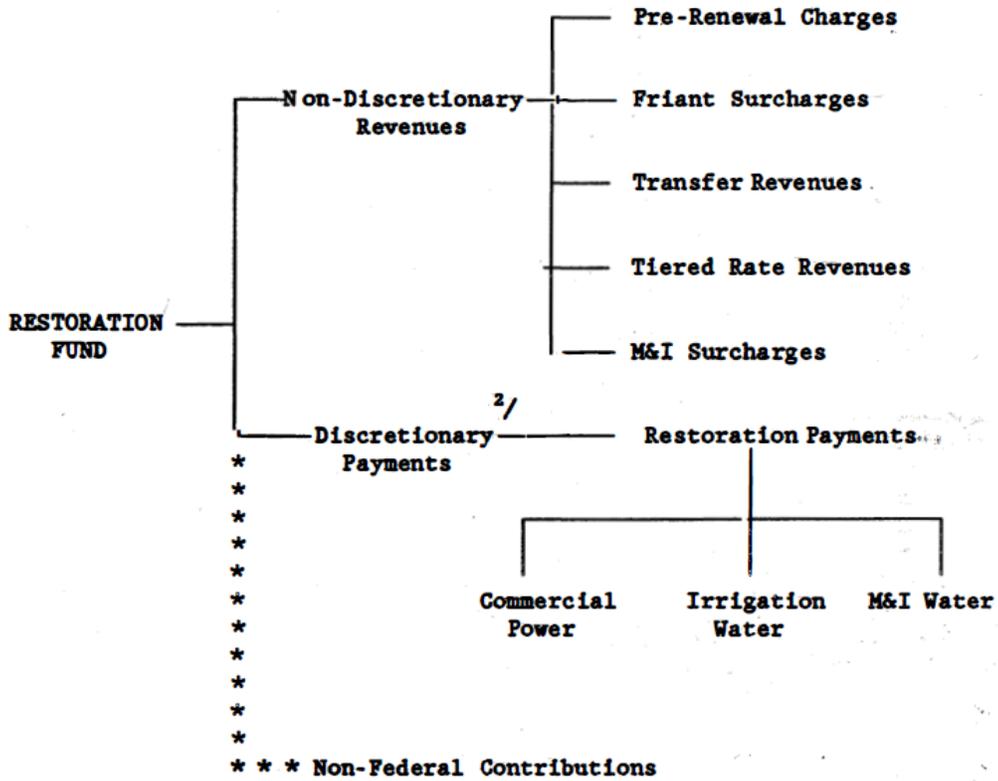
All Non-Discretionary Revenues are automatically received and deposited into the Restoration Fund. However, these receipts cannot be used unless and until appropriated by Congress. At telease through fiscal year 1997, the other source of Restoration Funds—the Discretionary payments—are to be assessed and collected in response to, and to the extent required by, Congressional appropriations. Restoration Fund revenues do not need to be collected prior to expenditure by the Secretary, provided there is a reasonable expectation that the funds will be collected as provided in the Interim Guidelines in the subject fiscal year, and the applicable appropriations do not mandate advance collection.

Annually, the Secretary will develop a budget and request the appropriation of funds from the Restoration Fund for Title 34 activities. A portion of those funds will be derived from the projected collection of Non-Discretionary Revenues. Appropriate language will be included in the budget request to raise the remaining amount, if any, through assessments and collection of Discretionary Payments. However, at least through fiscal year 1997, the final amount of Restoration Fund collections and amounts to be made available, if any, from the Restoration Fund each year is the prerogative of the Congress and is to be decided through the appropriation process.

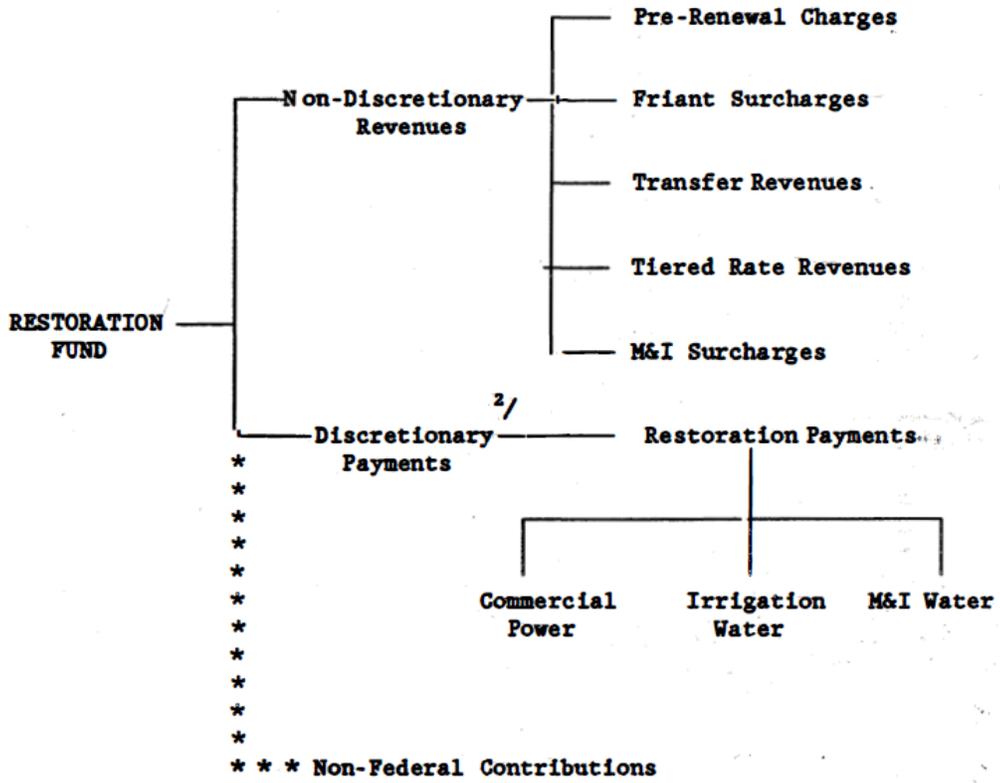
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DIAGRAM 1

REVENUES TO BE APPLIED TO THE RESTORATION FUND,
CENTRAL VALLEY PROJECT, TITLE 34, PUBLIC LAW 102-575



**** = Voluntary



**** = Voluntary

* Friant Surcharge: [1993-2009, following passage of P.L. 111-11, these charges are](#)

PART A

DEFINITIONS

Unless expressly provided to the contrary in these Guidelines, theAs-used herein terms and definitions used shall have the same meaning as defined in Reclamation Manuals and in existing contracts, additionally the terms:

1. "Act" means the Central Valley Project Improvement Act (CVPIA), Title XXXIV of Public Law 102-575, enacted October 30, 1992.
2. "Project" means the Central Valley Project, California.
- ~~3. "Secretary" means the Secretary of the Interior, or his designee.~~
- ~~4.3. "Project Water" means all 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.~~
- ~~5. "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.~~
- ~~6. "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.~~
- ~~7. "Municipal and Industrial (M&I) 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.~~
- ~~8. "Repayment Contract" means a contract with the United States providing Project Water pursuant to subsections (c)(1) and/or (d) of Section 9 of the Reclamation Project Act of 1939.~~
- ~~9. "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.~~
- ~~10. "Warren Act Contract" means a contract with the United States providing for the storage and/or conveyance of non-Project Water in and/or through Project facilities pursuant to the Act of February 21, 1911 (Public Law 61-406), as supplemented by Section 305 of Public Law No. 102-250 and subsection 3408(c) of Public Law No. 102-575, between the United States and an entity.~~
4. "Water Rights Settlement Contract" means a contract with the United States providing a supply of Base Water pursuant to Section 14 of the Reclamation Project Act of 1939 (1939 Act) and

probably but not necessarily a supplemental supply of Project Water pursuant to Section 9 of the 1939 Act, as amended and supplemented.

- ~~11.5.~~ "Base ~~WaterSupply~~" means the quantity of non-Project Water made available to a Water Contractor without payment to the United States and without application of the acreage limitation provisions of Federal reclamation law as specified in a Water Rights Settlement Contract with the United States.
- ~~12.6.~~ "Exchange Water" means the Project Water made available during each year to the Exchange Contractors pursuant to the Exchange Contracts without payment to the United States and without application of the acreage limitation provisions of Federal Reclamation law.
- ~~13.7.~~ "Exchange Contract" means a contract with the United States entered into pursuant to Section 14 of the Reclamation Project Act of 1939, as amended and supplemented, providing a supply of Project Water to an Exchange Contractor in lieu of the Exchange Contractor exercising certain rights to the use of other waters.
- ~~14.8.~~ "Exchange Contractors" means the entities or individuals who are parties to an Exchange Contract with the United States for an Exchange Water supply pursuant to Section 14 of the Reclamation Project Act of 1939, as amended and supplemented.
- ~~9.~~ "Additional Project Water" means that Project Water made available by the United States to a Water Contractor in a given year which is in excess of the maximum total quantity of Project Water specified in the long-term Water Service, Repayment or Water Rights Settlement Contract with the Water Contractor.
- ~~15.~~ "~~Flood Water~~" means a temporary Project Water supply made available to a Water Contractor as a result of an unusually large water supply not otherwise storable for Project purposes or infrequent and otherwise unmanageable flood flows of short duration.
- ~~16.10.~~ "Delivered Project Water" means all Project Water scheduled by the Water Contractors or Exchange Contractors for delivery by the United States consistent with the terms of the applicable contract and made available by the United States at the approved point(s) of delivery, less that Project Water which is not diverted but remaining under the physical control of the Project (e.g., in a Project canal).
- ~~17.11.~~ "Section 215 Water" means ~~Flood w~~Water made available to the Water Contractor for agricultural purposes without application of the acreage limitation and/or the full-cost provisions of Federal reclamation law pursuant to a contract with the United States. [See 43 CFR Section 426. 13(a)(3).1]
- ~~18.12.~~ "Cost of Service Water Rate" means the "annual charge for Irrigation Water and M&I Water established pursuant to the then applicable Project Water ratesetting policy which will recover all costs assigned to the Irrigation and M&I Water supply functions, respectively, which the established repayment period.

19-13. "Irrigation Full Cost Rate" means the annual charge described in paragraph (3) of Section 202 of the Reclamation Reform Act of 1982 (RRA), which, as determined by the Secretary, amortizes the expenditures for construction allocable to Project irrigation facilities in service, including all operation and maintenance (O&M) deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982.

20-14. "M&I Full Cost Rate" means the annual charge described in paragraph (3) of Section 202 of the RRA, which, as determined by the Secretary, shall amortize the expenditures for construction allocable to M&I facilities in service, including all operation and O&M deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from the dates such costs were first incurred.

21. "Transfer Revenue" means that portion of the Transferred Water Rate as described in Part E which is in excess of the Water Contractor's Cost of Service Water Rate if applicable, and is to be credited to the Restoration Fund in the absence of the requirement to pay the Irrigation Full Cost Rate pursuant to the RRA.

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22-16. "Ability to Pay" represents the contractor's financial capability to pay for Reclamation project construction costs or other costs that may be eligible pursuant to project-specific authorities. It is the farm-level payment capacity aggregated to the contractor, plus other steady income available to the contractor, minus contractor expenses, OM&R costs, reserve fund requirements, and other contractual obligations such as distribution system repayment requirements, excluding Reclamation projects construction costs.

"Non-Discretionary Payments" means those payments and charges required by the Act to be assessed and collected by the Secretary independent of the level of Congressional appropriations relative to the Central Valley Project Restoration Fund.

"Non-Discretionary Revenues" means those incremental revenues which are accrued as a result of the annual collection of the Non-Discretionary Payments required by the Act and which exceed the amounts that would have been collected in the absence of the requirement to pay the Non-Discretionary Payments.

23. "Discretionary Payments" means those payments and charges required by the Act to be assessed and collected by the Secretary as may be required by Congress through the annual appropriations process.²

1. "Transfer Revenue" means that portion of the Transferred Water Rate as described in Part E of the Interim Guidelines which is in excess of the Water Contractor's Cost of Service Water Rate² if applicable, and is to be credited to the Restoration Fund in the absence of the requirement to pay the Irrigation Full Cost Rate pursuant to the RRA.

"Ability to Pay" is that portion of the increased net farm income attributable to the off farm water supply (supplies) after allowances have been made for returns to farm investment and to family labor and management and has been generally limited by Reclamation law and policy to allow irrigators to transfer only the capital repayment obligations of main project facilities to the power users for repayment assistance.

Is there a need to distinguish between CVPIA related activities from CVP mitigation activities? Seems that w/o clear definition and guidance, the likelihood of blurring CVPIA and CVP mitigation activities with their respective funding buckets could occur. Also, has Reclamation established as a matter of policy/law whether additional funds not labeled or earmarked as being CVPIA, be used to fund CVPIA-related activities, especially, those under Title 34? What appears missing is a cost containment type objective to protect the vendible reimbursable functions from unlimited exposure to environmental mitigation costs.

² "Discretionary Revenues" are the same as "Discretionary Payments" as 100 percent of the Discretionary Payments are to be credited to the Restoration Fund. Accordingly, there is no need to include a definition of "Discretionary Revenues".

PART B

DEPOSITS TO THE RESTORATION FUND

[Subsection 3407(a)]

1. Revenues to be Deposited

The Restoration Fund shall serve as the depository in the Treasury of the United States for all revenues received by the Secretary from the following sources:

- a. Pre-Renewal Charges [subsection 3404(c)(3)] – Described in Part C of these Guidelines
- b. Tiered Water Revenues [subsection 3405(d)] – Described in Part D of these Guidelines
- c. Transfer Revenues [subsection 3405(a)(1)(B)] – Described in Part E of these Guidelines
- d. Friant Surcharges [subsection 3406(c)(1)] – Described in Part F of these Guidelines
- e. M&I Surcharges [subsection 3407(d)(2)(A)] – Described in Part G of these Guidelines
- f. Restoration Payments [subsection 3407(c) & (d)] – Described in Part H of these Guidelines
- g. Non-Federal Contributions [subsection 3407(a)] – Described in Part J of these Guidelines

~~All consistent with Per-Treasury Financial Manual Chapter 7100, Section 7130 – Interest, Penalty Charges and Administrative Fees, All interest, and penalty charges and administrative fees collected for delinquent payment of Restoration Fund payments and charges required by this Act shall be deposited to the U.S. Treasury's General Account Restoration Fund, but and will not be credited to the Water Contractor or Power of Power. All administrative charges collected for past due payment of Restoration charges and payments shall be deposited to the Treasury of the United States without credit to the Water Contractor or Power.~~

2. Contractor Accounts

On behalf of the Secretary, Reclamation shall keep accounts of all payments deposited in the Restoration Fund on behalf of each Water Contractor and of the total payments received from Power. ~~Individual Power Contractor deposits are tracked by Western Area Power Administration (WAPA). Deposits to the Restoration Fund which are used to pay for the projects, studies or facilities set forth in subsection 3406(b)³ of the Act shall offset an equal amount of the Water Contractors' or Power's assigned repayment obligation resulting from the implementation of any activities described in the Act.~~

³ Many subsection 3406(b) activities are wholly or partially reimbursable. Costs assigned to the reimbursable functions, including power and water, are to be allocated and recovered consistent with conventional Reclamation law and policy. Construction costs are usually capitalized through the water and power rates. In the event Restoration Funds are used to "upfront finance" subsection 3406(b) activities, the CVPIA requires that all amounts so used be immediately credited to the Water Contractors and Power.

PART C

PRE-RENEWAL CHARGES

[Subsection 3404(c)(3)]

Section 3404(c)(3) has been overcome by events and pre-renewal charges no longer apply. All of the Central Valley Project Water Service, Repayment and Water Right Settlement Contracts have been renewed, pursuant to Section 3404(c), or are in a state of interim renewal, pursuant to Section 3404(c)(1), of the CVPIA, pending site specific environmental compliance; or will be/have been converted to Repayment Contracts pursuant to Section 4011 (a-d) and (f) of the Water Infrastructure Improvements for the Nation Act or Section 10010 (a) of the San Joaquin River Restoration Settlement Act.

1. Applicability

Beginning on October 1, 1997, or January 1 following the calendar year of completion of the programmatic environmental impact statement (PEIS) required by Section 3409 of the Act, whichever occurs ~~et~~ first, all Water Contractors having an existing Water Service, Repayment or Water Rights Settlement Contract which was in effect on October 30, 1992, excepting those Water Contractors specifically exempted as described below, shall be assessed annually a pre-renewal mitigation and restoration payment (hereafter referred to as Pre-Renewal Charges) for each acre-foot of Delivered Project Water.

For the purposes of applying the Pre-Renewal Charges, Project Water shall include any Project Water provided under a Water Right Settlement Contract, Additional Project Water, and/or Project Water transferred to a transferee(s) pursuant to an approved transfer. Such assessments shall cease on the effective date of renewal of the Water Service, Repayment or Water Rights Settlement Contract.

Water Contractors shall not be assessed Pre-Renewal Charges if one of the following conditions is met:

- a. The Water Contractor's existing Water Service, Repayment or Water Rights Settlement Contract was renewed between January 1, 1988, and October 30, 1992, or;
- b. If the PEIS is not completed by October 1, 1997, and prior to that date the Water Contractor enters into a binding agreement with the United States to renew the existing Water Service, Repayment or Water Rights Settlements Contract immediately upon completion of the PEIS and all other documentation as may be required by the National Environmental Policy Act.

Pre-Renewal Charges are not applicable to Base Water, Exchange Water, Section 215 Water, Flood Water, or Warren Act Contract water.

2. Rescheduled Water⁴

With the exception of Water Contractors specifically exempt from Pre-Renewal Charges as provided above, Pre-Renewal Charges will be applicable under certain circumstances to Project Water which is rescheduled from one water year (e.g., water year X) to a later water year (e.g., water year X+1). Because the Act applies Pre-Renewal Charges only to Delivered Project Water, rescheduled Project Water which is delivered to a Water Contractor or a transferee pursuant to an approved transfer

⁴All proposals to reschedule Project Water to a later water year must be approved by Reclamation.

following the effective date of application of the Pre-Renewal Charges shall be assessed Pre-Renewal Charges at the rate applicable to the Water Contractor in the year of actual delivery (e.g., year X+1).

3. Banking of Transferred Water

In the instances when transferred Project Water is banked with an intermediary (third) party for the principal purpose of providing a future water supply⁵ to the transferee, the water shall be treated as Delivered Project Water upon delivery to the intermediary and not when withdrawn from the bank. The Pre-Renewal Charges shall be those in effect in the year of delivery to the intermediary.

4. Payments

The Pre-Renewal Charges shall equal one and one-half times the Restoration Payments applicable to the Water Contractor for Irrigation and/or M&I Water as described in Part H of these Guidelines.

Pre-Renewal Charges must be paid to the United States by the Water Contractor prior to the effective date of renewal of the Water Contractor's existing Water Service or Repayment Contract.

5. Type of Water Use

For the purpose of applying Pre-Renewal Charges to Project Water, the type of Project Water use (Irrigation or M&I) and the resulting rate to be paid shall be consistent with the actual use of such water by the Water Contractor or a transferee(s) pursuant to an approved transfer. In those instances when the Project Water is banked with an intermediary for the principal purpose of providing a future water supply to a transferee, the type of water shall be consistent with the ultimate intended use by the transferee consistent with the applicable transfer agreement.

6. Relationship to Other Payments and Surcharges

Pre-Renewal Charges shall be paid by the Water Contractor (the transferor) in addition to any other applicable payments or charges as required by the Act and other applicable provisions of Federal Reclamation Law (hereafter referred to as Reclamation Law). Transferees are not responsible for payment to the United States of Pre-Renewal Charges.

7. Revenues to be Credited to the Restoration Fund

All Pre-Renewal Charges shall be credited to the Restoration Fund described in Part B of these Guidelines.

⁵The future water supply may be accomplished through a water exchange.

PART D

TIERED WATER RATES

[Subsection 3405(d)]

1. Applicability

New, renewed and amended Water Service, ~~Water Rights Settlement~~ or Repayment Contracts which are executed after October 30, 1992, and which have a term longer than three years are subject to the Tiered Water Rate provisions of the Act. Pursuant to such contracts, Tiered Water Rates shall be applied to all Delivered Project Water, ~~including that provided under a Water Rights Settlement Contract~~, Additional Project Water and Project Water ~~Transferred~~ pursuant to an approved transfer.

Tiered Water Rates shall not be applied to Base ~~Water Supply, Schedule 2 Water~~, Exchange Water, Section 215 Water, ~~Flood Water~~, Warren Act Contract water; or to Project Water used to produce a crop that the Secretary determines, in writing, provides significant and quantifiable waterfowl habitat in the fields where the water is used and the crops are produced, provided such deliveries are made and used consistent with the terms of a binding agreement to be signed by the Water Contractor, the participating landholder(s), and the United States (Section 3405(d)(4)).

Project Water not subject to Tiered Water Rates shall be paid for at the rate otherwise applicable to such water.

2. Calculation and Application of Tiered Water Rates

Tiered Water Rates shall be computed annually by Reclamation consistent with the following criteria:

- a. First Rate Tier: shall apply to a quantity of water up to 80 percent of the contract total and shall not be less than the applicable contract rate (including Irrigation, M&I, Class 1, and Class 2 Water, if any; but excluding Base, Exchange, Section 215, and Warren Act Contract water, if any).
 - b. Second Rate Tier: shall apply to that quantity of water over 80 percent and under 90 percent of the contract total and shall be paid for by the Water Contractor at the following applicable rates:
 - (1) Irrigation Water: a rate equal to the average of the otherwise applicable contract rate for Irrigation Water and the applicable Irrigation Full Cost Rate.
 - (2) M&I Water: a rate equal to the average of the otherwise applicable contract rate for M&I Water and the applicable M&I Full Cost Rate.
 - c. Third Rate Tier: shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate.
- a. ~~First Tier: Up to and including the first 80 percent of the Water Contractor's maximum combined contractual Project Water entitlement (including Irrigation, M&I, Class 1, and Class 2 Water, if any; but excluding Base, Exchange, Flood, Section 215, and Warren Act~~

~~Contract water, if any) shall be paid for by the Water Contractor at the applicable contract water rate(s).~~

~~b. Second Tier: Water in excess of 80 percent and up to and including 90 percent of the Water Contractor's maximum combined contractual Project Water entitlement shall be paid for by the Water Contractor at the following applicable rates:~~

~~(1) Irrigation Water: a rate equal to the average of the otherwise applicable contract rate for Irrigation Water and the applicable Irrigation Full Cost Rate.~~

~~(2) M&I Water: a rate equal to the average of the otherwise applicable contract rate for M&I Water and the applicable M&I Full Cost Rate.~~

~~c. Third Tier: Water in excess of 90 percent of the Water Contractor's maximum combined contractual Project Water entitlement, if any, shall be paid for by the Water Contractor at the applicable Full Cost Rate.~~

Irrigation Full Cost Rates are calculated pursuant to the applicable provisions of the RRA. The Irrigation Full Cost Rates include components to recover applicable operation and maintenance (O&M) costs, accumulated deficits, ~~construction~~~~capital~~ costs, and interest on unpaid ~~construction~~~~capital~~ costs. Irrigation Full Cost Rates are computed to recover O&M costs within the year incurred; accumulated deficits within the authorized repayment period; and ~~capital~~~~construction~~~~capital~~ costs amortized at the applicable RRA interest rate over the remaining repayment period.

M&I Full Cost Rates are calculated pursuant to a similar procedure to that used for computing the Irrigation Full Cost Rates.

Consistent with the above, a Water Contractor shall not be subject to the Second and Third ~~Rate~~ Tier ~~water rates~~ if the cumulative total of all Project Water ~~Diverted for use~~~~delivered to~~ ~~by~~ the Water Contractor and/or a ~~transferred out~~~~transferee(s)~~ in a given contract year equals 80 percent or less of the Water Contractor's maximum combined contractual Project Water entitlement.

Pursuant to these ~~Interim~~ Guidelines, all Additional Project Water, if any, but excepting that providing significant and quantifiable waterfowl habitat, shall be charged at the applicable Third Tier rate.

3. Rescheduled Water⁶

Tiered Water Rates will be applicable under certain circumstances to that Project Water which is rescheduled for delivery from one water year (e.g., water year X) to a ~~later~~~~following~~ water year (e.g., water year X+1). Because the Act applies Tiered Water Rates only to Project Water actually delivered, rescheduled Project Water is not subject to Tiered Water Rates unless and until delivered to the Water Contractor or a transferee(s) pursuant to an approved transfer, provided the subject Water Contractor is subject at the time of delivery to Tiered Water Rates consistent with the above Applicability provisions (subsection 1 of Part D).

The applicable Tiered Water Rates shall be those in effect in the year of

⁶ All proposals to reschedule the delivery of Project Water to a later water year must be approved by Reclamation.

actual delivery (e.g., water year X+1). However, the Second and Third Tier rates shall be applied only if the amount of rescheduled water delivered in the later year (e.g., water year X+1) when added to the Project Water otherwise delivered in the later water year exceeds 80 and 90 percent, respectively, of the maximum contractual entitlement applicable in the later water year (e.g., water year X+1).

4. Banking of Transferred Water

In those instances when transferred Project Water is banked with an intermediary (third) party for the principal purpose of providing a future water supply to the transferee, the water shall be regarded as Delivered Project Water when delivered to the intermediary party and not when withdrawn from the bank.

5. Type of Water Use

For the purpose of applying Tiered Water Rates to Project Water transferred pursuant to the Act, the type of water use (Irrigation or M&I) and the rate to be paid shall be consistent with the actual use of the water by the Water Contractor or by the transferee. In those instances when the Project Water is banked with an intermediary for the principal purpose of providing a future water supply to a transferee, the type of water shall be consistent with the ultimate intended use by the transferee consistent with the applicable transfer agreement.

6. Determination of Tiered Water Rate Threshold Percentages

Reclamation's water delivery records, which document the monthly and cumulative quantities of Delivered Irrigation and M&I Project Water, shall be used to determine the water deliveries, if any, in excess of 80 and 90 percent of the maximum combined contractual entitlement.

7. Payments Due, Late Payments and Adjustments

Tiered Water Rates shall be paid in accordance with the payment terms included in the Water Contractor's then existing Water Service or Repayment Contract. Similarly, specifics regarding past due payment of Tiered Water Rates shall be accomplished in a manner consistent with the terms included in the Water Contractor's then existing Water Service or Repayment Contract.

Transferees are not responsible for payment to the United States of the Tiered Water Rates which may be applicable to Project Water transferred into their respective service areas.

8. Relationship to Other Payments and Surcharges

The responsibility of the Water Contractor to pay the applicable Tiered Water Rates as described above shall be in addition to all other payments required by the Act and other applicable provisions of reclamation law.

In the event Project Water is concurrently subject to a Tiered Water Rate, a Full Cost Rate under the RRA and/or a Transferred Water Rate (see Part E of these [Interim Guidelines](#)), the Water Contractor shall be required to pay the higher (highest) of the applicable rates. (The application of this procedure is shown in the examples included in Appendix A).

9. Revenues to be Credited to the Restoration Fund

~~In accordance with Section 3405(f) All revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section, shall be covered to the Restoration Fund as provided for in these Guidelines, over and above what would otherwise have been collected as a result of the application of the Tiered Water Rates (hereinafter referred to as Tiered Rate Revenues) shall be credited to the Restoration Fund as provided in Part B of these Interim Guidelines.~~ In the absence of the requirement to pay the Irrigation Full Cost Rate pursuant to the RRA, Tiered Rate Revenues shall consist of those revenues which exceed the Water Contractor's assigned Cost of Service Rate(s).⁷ No Tiered Rate Revenues shall be deposited or credited to the Restoration Fund for water otherwise subject to the Irrigation Full Cost Rate provisions of the RRA.

10. Requests for Waterfowl Habitat Exemption

The Water Contractor is responsible for submitting formal requests and necessary documentation for consideration for an exemption from Tiered Water Rates based upon waterfowl habitat value. (Criteria for waterfowl habitat exemption are to be developed by the United States Fish and Wildlife Service.)

⁷ In the event the Water Contractor is subject to both the Transferred Water Rate and the Tiered Water Rate provisions of the Act (but not the Irrigation Full Cost Rate), the total credited amount of Tiered Rate Revenues and Transfer Revenues per acre-foot shall not exceed the absolute difference between the highest rate required to be paid and the Cost of Service Rate.

PART -E

TRANSFERRED WATER RATES

[Subsection 3405(a)(1)(B)]

1. Applicability

All Project ~~contractors under w~~Water ~~service, repayment,~~ including Class 1 Water, Class 2 Water, and Project Water provided pursuant to ~~a and w~~Water ~~r~~Rights ~~settlement~~Settlement ~~e~~Contracts, ~~where~~ which Project water is transferred pursuant to the transfer provisions of the Act ~~will follow the Business Practice Guidelines for Developing Rates and Applying Revenue for Central Valley Water Transfers. This Guideline is included on the Financial Management Division WEB site. The Transfer Guidelines are subject to revision and if modified will go through a formal update process allowing for comment by water and Power contractors, WAPA, and the contractor representatives~~other interested stakeholders. ~~from a Water Contractor to an entity (transferee) which was not a Water Contractor on October 30, 1992,⁸ and is used by the transferee as:~~

~~a. Irrigation Water shall be paid for by the Water Contractor at the Full Cost Rate applicable to the Water Contractor.~~

~~b. M&I Water shall be paid for by the Water Contractor at the M&I water rate applicable to the Water Contractor as determined by Reclamation consistent with the then current Project M&I ratesetting policy and applicable reclamation law.~~

All Exchange Water which is transferred pursuant to the transfer provisions Of the Act from an Exchange Contractor to an entity (transferee) which was not a Water Contractor on October 30, 1992, and is used by the transferee as:

~~a. Irrigation Water shall be paid for by the Exchange Contractor at the Full Cost Rate which would be applicable to the Exchange Contractor if required to pay for Project water consistent with the then current Project irrigation ratesetting policy and applicable reclamation law.~~

~~b. M&I Water shall be paid for by the Exchange Contractor at the M&I rate which would be applicable to the Exchange Contractor if required to pay for Project water consistent with the then Project M&I ratesetting policy and applicable reclamation law.~~

~~Irrigation and M&I Full Cost Rates applicable to the Exchange Contractors are to be calculated similarly to those computed for Water Contractors. Unlike Water Contractors, there are no surpluses or deficits applicable to the yearly Project water operations performed on the behalf of the Exchange Contractors. Accordingly, surpluses or deficits are not reflected in Irrigation or M&I Full Cost Rates applicable to Exchange Contractors.~~

~~The Transferred Water Rates described above do not include charges for additional Project services, if~~

⁸ Entities which held short term or interim Water Service Contracts in effect on October 30, 1992, without a right of renewal may be a recipient of transferred Project Water pursuant only to the authority of Section 3405 of the CVPIA. Such entities do not qualify for within Project ("Contractor to Contractor") transfers following expiration of the Water Service Contract in effect on October 30, 1992.

any, which may be needed to effectuate a transfer from a Water Contractor or an Exchange Contractor to a transferee. Charges for such additional Project services shall be computed based on the specific circumstances of the proposed transfer.

2. Base Water or Warren Act Contract Deliveries

The Transferred Water Rates are not applicable to Base Water or Warren Act Contract deliveries. In addition, transfers of Project Water between entities qualifying as Project Water Contractors on October 30, 1992,⁹ are not subject to the Transferred Water Rate provisions of the Act.

32. Rescheduled Water¹⁰

Transferred Water Rates are applicable to Project Water which is rescheduled from one water year to a later water year and delivered pursuant to an approved transfer agreement with the United States to a transferee which was not a Water Contractor on October 30, 1992. Because the Act applies Transferred Water Rates only to Project Water actually delivered, rescheduled Project Water is not subject to Transferred Water Rates until physically delivered to such a transferee. Water which is rescheduled from one water year and delivered in a later water year (e.g., water year X+1) to a transferee shall be subject to the Water Contractor's applicable Transferred Water Rates in effect in the year of delivery (e.g., water year X+1). For more information related to rescheduled water, refer to the rescheduling guidelines and supporting standard operating procedure.

43. Banking of Transferred Water

In those instances when transferred Project Water is banked with an intermediary (third) party for the principal purpose of providing a future water supply to the transferee, the water shall be regarded as Delivered Project Water upon delivery to the intermediary and not when withdrawn from the Bank.

54. Type of Water Use

For the purpose of administering the Transferred Water Rate provisions of the Act, the manner in which Project Water is used (as Irrigation Water or M&I Water) and the resulting rate to be paid shall be consistent with the actual use of such water by the transferee(s). In those instances when Project Water is banked with an intermediary, the type of water use shall be consistent with the ultimate intended use by the transferee consistent with the applicable transfer agreement.

65. Payments Due, Delinquent Payments and Adjustments

Water Contractors. The Water Contractor (the transferor) is responsible for full payment of all applicable Transferred Water Rates for Project Water transferred by the Water Contractor pursuant to the transfer provisions of the Act unless the water is transferred from an exchange contractor. Exchange water is the responsibility of the transferee.

Notwithstanding any requirements for the advance payment for Project Water as may be required by the applicable Water Service or Repayment Contract, the total amount of Transferred Water Rate payments, if any, owed for Project Water delivered to a transferee (s) or an intermediary is due and payable by the Water Contractor by the end of the month following the month of delivery. Such

⁹ See footnote 5.

¹⁰ All proposals to reschedule water to a later water year must be approved by Reclamation.

amounts shall be consistent with the quantities of Project Irrigation and M&I Water shown in Reclamation's water delivery report of the subject month. The water delivery report shall be regarded by the Water Contractor as a bill for all Transferred Water Rate payments.

Any adjustments for overpayment or underpayment shall be accomplished through the adjustment of Transferred Water Rate payments or other charges due to the United States relative to the subject Water Service or Repayment Contract and payable in the next month.

Past due payment of Transferred Water Rates shall be accomplished in a manner consistent with the past due terms included in the Water Contractor's then-existing Water Service or Repayment Contract.

Exchange Contractors. The transferee is responsible for Exchange Contractors are responsible for full payment of all Transferred Water Rates for Exchange Water transferred pursuant to the transfer provisions of the Act. The total amount of Transferred Water Rate payments, if any, owed for water delivered to a transferee (s) or an intermediary is due and payable by the transferee Exchange Contractor by the end of the month following the month of delivery. Such amounts shall be consistent with the quantities of Project Irrigation and M&I Water shown in the Reclamation's water delivery report for the subject month. The water delivery report shall be regarded by the transferee Exchange Contractor as a bill for all Transferred Water Rate payments.

Any adjustments for overpayment or underpayment shall be accomplished through the adjustment of Transferred Water Rate payments due to the United States relative to the subject transfer agreement Exchange Contract and payable in the next month. In the absence of such future payments in the next month, overpayments shall be refunded to the transferee Exchange Contractor.

Specifics regarding past due payment of Transferred Water Rates shall be accomplished in a manner consistent with the terms included in Appendix B herein.

Transferees. Transferees are not responsible for payments to the United States of Transferred Water Rates which may be applicable to Project Water transferred into their respective service areas.

True up in cost from estimated O&M per acre foot which are the rates established for repayment of water service charges initially may vary considerably from the actual O&M per acre foot rate. These true-ups changes are the responsibility of the transferor or transferee who has payment responsibility for the water.

6.Relationship to Other Payments and Surcharges

The responsibility of the Water Contractor or Exchange Contractor to pay the applicable Transferred Water Rates as described above shall be in addition to all other payments required by the Act and other applicable provisions Reclamation Law.

In the event Project Water is concurrently subject to the Transferred Water Rate provisions of this Act, an Irrigation Full Cost Rate as required by the RRA and/or Tiered Water Rate (see Part D of these Guidelines), the Water Contractor or Exchange Contractor shall pay the higher (highest) of the applicable rates. (The application of this procedure is shown in examples included in Appendix A.)

72. Revenues to be Credited to the Restoration Fund

In the absence of the requirement to pay the applicable Irrigation Full Cost Rate pursuant to the RRA, all Transferred Water Rate payments in excess of the Water Contractor's Cost of Service Rate (hereafter referred to as Transfer Revenues) shall be calculated and credited by Reclamation to the Restoration Fund.¹¹

In the absence of the requirement to pay the applicable Irrigation Full Cost Rate pursuant to RRA, Transferred Water Rate payments required to be made for the transfer of Exchange Contractor water to an entity which was not a Water Contractor on October 30, 1992, shall be deposited in full to the Restoration Fund.

No Transfer Revenues shall be deposited or credited to the Restoration Fund for Project Water otherwise subject to the Irrigation Full Cost Rate provision of the RRA as such revenues shall be credited in the normal manner for RRA receipts.

¹¹ In the event the Water Contractor is subject to both the Transferred Water Rate and Tiered Water Rate provisions of this Act (but not the Irrigation Full-Cost Rate), the total credited amount of Tiered Rate Revenues and Transfer Revenues per acre-foot shall not exceed the absolute difference between the highest rate required to be paid and the cost-of-service rate.

PART F

FRIANT SURCHARGES

[Subsection 3406(c)(1)]

Following the passage of Public Law 111-11, Title X, Part I, San Joaquin River Restoration Settlement Act in 2009, Friant Surcharges were deposited into the, then created, San Joaquin River Restoration Fund (SJRRF). Section 10009 (c)(1) established the fund in the Treasury and subsection (A) directed the Secretary to deposit “all payments received pursuant to section 3406(c)(1)” into the SJRRF. Friant Surcharge revenues are still counted towards the \$50,000,000 (October 1992 price levels) described in CVPIA section 3407(c)(2) pursuant to Section 10007 that states:

“(1) The Secretary shall continue to assess and collect the charges provided in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4721), as provided in the Settlement; and”

“(2) those assessments and collections shall continue to be counted toward the requirements of the Secretary contained in section 3407(c)(2) ...”

1. Applicability

Beginning on October 31, 1992, through September 31, 2009 all Water Contractors who received Project Water ~~from or from~~ the Friant Division pursuant to a Water Service, Water Rights Settlement or Repayment Contract ~~were required to shall~~ pay to the United States the applicable Friant Surcharge for each acre-foot of Delivered Project Water, including Class 1 and Class 2 Water; Flood Water used for M&I purposes; Section 215 Water; Additional Project Water; Project Water provided pursuant to a Water Rights Settlement Contract; and/or Project Water delivered to a transferee(s) pursuant to an approved transfer(s).

Following the passage of Public Law 111-11, Title X, Part I, San Joaquin River Restoration Settlement Act (Settlement Act) in 2009, Friant Surcharges were deposited into the, then created, San Joaquin River Restoration Fund (SJRRF). Section 10009 (c)(1) established the fund in the Treasury and subsection (A) directed the Secretary to deposit “all payments received pursuant to section 3406(c)(1)” into the SJRRF. Friant Surcharge revenues are still counted towards the \$50,000,000 (October 1992 price levels) described in CVPIA section 3407(c)(2) pursuant to Section 10007 that states:

“(1) The Secretary shall continue to assess and collect the charges provided in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4721), as provided in the Settlement; and”

“(2) those assessments and collections shall continue to be counted toward the requirements of the Secretary contained in section 3407(c)(2) ...”

The means by which the Friant Surcharge is assessed and collected remains consistent as before passage of the Settlement Act.

The Friant Surcharges shall continue until such time as flows of sufficient quantity, quality and timing are provided at or below Gravelly Ford to meet the anadromous fishery needs of the San Joaquin River identified in the plan to be developed by the Secretary and approved by an act of Congress.

Friant Surcharges are not applicable to Warren Act Contracts or [Schedule 2](#) Base Water deliveries.

2. Rescheduled Water¹²

Friant Surcharges are applicable to Project Water which is released from Friant Division facilities and rescheduled from one water (e.g., water year X) and delivered in a later water year (e.g., water year X+1). Because the Act applies Friant Surcharges only to Project Water actually delivered, [rescheduled Project](#) [rescheduled Project](#) Water which is delivered to a Water Contractor, a transferee or intermediary on behalf of the transferee shall be subject to Friant Surcharges applicable to Water Contractor in the year of actual delivery (e.g., year X+1).

3. Banking of Transferred Water

In the instances when transferred Friant Division Project Water is banked with an intermediary (third party for the principle purpose of providing future water supply to the transferee, the water shall be treated as Delivered Project Water upon delivery to the intermediary party and not when withdrawn from the Bank. The Friant Surcharges shall be those in effect in the year of delivery to the intermediary.

4. The Friant Surcharges

[CVPIA directed](#) ~~the~~ Friant Surcharges shall be [assessed as follows](#): (a) \$4.00 per acre-foot of Delivered Project Water before or on September 30, 1997; (b) \$5.00 per acre-foot of Delivered Project Water after September 30, 1997, and through September 30, 1999; and (c) \$7.00 per acre-foot for all Delivered Project Water thereafter. [As described in the Settlement Act, those Friant Contractors who converted their contracts to lump sum or accelerated payment, and who have paid off their portion of the Friant Division infrastructure, section 10010 \(d\) of the Settlement Act entitles them to a reduction in the Friant surcharge from \\$7.00 per acre-foot to no less than \\$4.00 per acre-foot. The calculated reduction shall remain fixed from 2020 through 2039. The reduction shall be implemented annually unless the Secretary determines that, based on the availability of "other monies", the Friant surcharge is needed to cover the cost of Settlement including any federal operation and maintenance costs of the facilitates that the Secretary determines are needed to implement the Settlement. If the Secretary determines that the charges are necessary to implement the Settlement, the Secretary shall instead, reduce the contractor's operation and maintenance \(O&M\) obligation by an equivalent amount and may not recover this cost from any Central Valley Project Contractor. Reclamation calculated a reduction rate of a \\$3.00 per acre-foot of Project water sold and determine on an annual basis which fund will receive the reduction well in advance of water rates being set by Ratesetting. Following 2039 the Friant Surcharge shall be set at \\$7.00 per acre-foot for all Delivered Project Water thereafter.](#)

5. Payments Due, Delinquent Payments and Adjustments

The Water Contractor is responsible for full payment of all Friant Surcharges for Project Water delivered to the Water Contractor, or a transferee or intermediary pursuant to an approved transfer. The total amount of Friant Surcharges is due and payable by the Water Contractor by the end of the month following the month of delivery. Such amounts shall be consistent with the quantities of Project Water

¹² All proposals to reschedule Project Water to a later water year must be approved by Reclamation.

shown in Reclamation's water delivery report for the subject month. The water delivery report shall be regarded by the Water Contractor as a bill for all Friant Surcharge payments.

Any adjustments for overpayment or underpayment shall be accomplished through the adjustment of Friant Surcharges or other charges due to the United States relative the subject Water Service or Repayment Contract and payable in the next month.

The amount to be paid for past due payment of the Friant Surcharges shall be computed in a manner consistent with the terms included in the Water Contractor's then existing Water Service or Repayment Contract.

Transferees are not responsible for payment to the United States of Friant Surcharges applicable to Project Water transferred to them for their use.

6. Relationship to Other Payments and Surcharges

The responsibility of the Water Contractor to pay Friant Surcharges as described above shall be in addition to all other charges required by this Act and other applicable reclamation law.

7. Revenues to be Credited to the Restoration Fund

All Friant Surcharge Revenues [collected between October 31, 1992 and September 31, 2009](#) shall be credited to the [Central Valley Project Restoration Fund](#) as described in [Part B of these Interim Guidelines](#). [From October 1, 2009 forward, Friant Surcharge Revenues are credited in accordance with the Settlement Act.](#)

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PART G

M&I SURCHARGES

[Subsection 3407(d)(2)(A)]

1. Applicability

Reclamation shall assess and collect an annual charge, hereafter referred to as the M&I Surcharge, for all Project Water which is used for M&I purposes and:

- a. Sold by the United States pursuant to a new Water Service, Water Rights Settlement or Repayment Contract to an entity which was not a Water Contractor prior to October 31, 1992,¹³ or
- b. Transferred by an existing¹⁴ Water Contractor or Exchange Contractor to an entity which was not a Water Contractor prior to October 31, 1992.

The M&I Surcharge shall be in addition to the Transferred Water Rates which may be applicable to Project Water transferred for M&I purpose pursuant to the Act (See Part E of these ~~Interim~~ Guidelines.)

For the purposes of administering the M&I Surcharge, Project Water shall include Class 1 and Class 2, Flood, Section 215, Exchange, Project Water provided by a Water Rights Settlement Contract, [Project Water provided by a Water Service or Repayment Contract](#), and/or Additional Project Water, if any.

The M&I Surcharge is not applicable to Base [Water Supply, Schedule 2 Water](#) or Warren Act Contract deliveries.

2. Rescheduled Water¹⁵

M&I Surcharges are applicable to Project Water which is rescheduled by an existing Water Contractor from one water year (e.g., water year X) to a later water year (e.g., water year X+1) and ultimately delivered to a transferee for use as M&I water pursuant to an approved transfer agreement. Similarly, any rescheduled Project Water which is provided by the United States pursuant to a ~~new~~ Water Service or Repayment Contract to an entity which was not a Water Contractor prior to October 31, 1992 and used for M&I purposes is subject to M&I Surcharges. The M&I Surcharges shall be those in effect in the year of actual delivery (e.g., water year X+1).

3. Banking of Transferred Water

In those instances when transferred Project Water is banked with an intermediary (third) party for the principal purpose of providing a future water Supply to the transferee, the water shall be regarded as delivered to the transferee upon delivery to the intermediary and not when withdrawn from the bank. All transferred Project Water which is banked with an intermediary shall be treated as M&I Water if the

¹³ For the purposes of applying M&I Surcharges, entities which held only short-term or ~~interim~~ Water Service Contractors prior to October 31, 1992, without right of renewal, are regarded as not having been a Water Contractor prior to October 31, 1992.

¹⁴ "Existing" shall mean having the status of a Water Contractor or Exchange Contractor on October 30, 1992.

¹⁵ All proposals to reschedule water to a later water year must be approved by Reclamation.

ultimate intended use by the transferee is for M&I purposes consistent with the applicable transfer agreement.

4. The M&I Surcharge

The M&I Surcharge shall be \$25.00 (October 1992 price levels) per acre-foot of Delivered Project Water. The M&I Surcharge shall be adjusted annually by Reclamation solely to reflect fluctuations in costs as projected by the Office of the Management and Budget for use in developing Reclamation's annual budgets (hereafter referred to as OMB escalation factors).

5. Payments Due, Delinquent Payments and Adjustments

Relative to new Water Service, Water Rights Settlement or Repayment Contracts, the M&I Surcharge shall be the repayment responsibility of the Water Contractor. Pursuant to a water transfer, the M&I Surcharge shall be the repayment responsibility of the applicable Water Contractor or Exchange Contractor (the transferor).

Relative to new contracts, the total amount of M&I Surcharges, if any, owed by the Water Contractor for Water diverted by the Water Contractor, a transferee(s), or an intermediary party, is due and payable by the end of the month following the month of delivery. Such amounts shall be consistent with the quantities of Project M&I Water shown in Reclamation's water delivery report for the subject month. The water delivery report shall be regarded by the Water Contractor as a bill for all M&I Surcharge payments.

Pursuant to a water transfer, the total amount of M&I Surcharges, if any, owed by the Water Contractor or Exchange Contractor for water diverted by a transferee or an intermediary, is due and payable by the end of the month following the month of delivery. Such amounts shall be consistent with the quantities of Project M&I Water transferred as shown in Reclamation's water delivery report for the subject month. The water delivery report shall be regarded by the Water Contractor or Exchange Contractor as a bill for the M&I Surcharges.

Any adjustments for overpayment or underpayment shall be accomplished through the adjustment of M&I Surcharges or other charges due to the United States relative to the subject water service or repayment contract and payable in the next month. In the absence of any additional imminent repayment obligations to the United States by the Exchange Contractor, any overpayment shall be refunded to the Exchange Contractor.

The amount to be paid for past due payment of M&I Surcharges by Water Contractors shall be computed in a manner consistent with the terms included in the Water Contractor's then existing Water Service, Water Rights Settlement or Repayment Contract. The amount to be paid for past due payment of M&I Surcharges by Exchange Contractors shall be computed consistent with the provisions of Appendix B as included herein.

Transferees are not responsible for payment to the United States of the M&I Surcharges applicable to Project Water transferred to them.

6. Relationship to Other Payments and Surcharges

It is the responsibility of the ~~transferor~~~~Water Contractor or Exchange Contractor~~ to pay the M&I Surcharge ~~is~~ in addition to all other charges required by this Act and other applicable reclamation law.

7. Revenues to be Credited to the Restoration Fund

All M&I Surcharge revenue shall be credited to the Restoration Fund described in [Part B](#) of these [Interim Guidelines](#).

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PART H

MITIGATION AND RESTORATION PAYMENTS

[Subsection 3407(c) & (d)]

1. Applicability

Section 3407 of the Act provides that to the extent required in Congressional acts appropriated funds to partially finance the costs to carry out “programs, projects, plans, and wildlife restoration, improvement and acquisition provisions” of the Act, Reclamation shall:

- a. Determine, assess, and collect additional annual Mitigation and Restoration payments (hereafter referred to as M&R Payments) on Project Irrigation Water and M&I Water, Additional Project Water, Project Water provided pursuant to a Water Rights Settlement Contract, and Section 215 Water, if any, which is sold and delivered to the Water Contractors, and
 - i. M&R Payments shall not be assessed on Base Supply, Exchange Water, Schedule 2 Water, or Warren Act Contract deliveries.
- b. Determine a Power Mitigation and Restoration Payment Obligation to be assigned to Power.
 - a. The Western Area Power Administration (WAPA) shall prorate the M&R Payment Obligation among various power beneficiaries and shall assess the resulting Power M&R Payments.

2. Objectives and Constraints

The M&R Payment Obligation to be collected from Water and Power is to be assigned annually consistent with the objectives and constraints set forth below:

- a. All funds (\$50M per year October 1992 price levels) collected into the Restoration Fund, in a given fiscal year, shall approximate the appropriated amount for that fiscal year unless the Secretary has determined that all mitigation and restoration actions required by Section 3406 of the Act are completed. Thereafter, the amount appropriated each year and the total of all Restoration Funds to be collected in each fiscal year thereafter shall be reduced to \$35 million (October 1992 price levels). All other objectives and constraints applicable to M&R Payments as detailed herein shall remain in full force and effect following the reduction of that ceiling.
- b. The M&R Payment Obligation shall not exceed \$30 million (October 1992 price levels) based upon a three-year rolling average. Following the determination by the Secretary that all mitigation and restoration actions required by Section 3406 are complete, the \$30 million (October 1992 price levels) rolling-average limit shall be reduced to \$15 million (October 1992 price levels). All other objectives and constraints applicable to M&R Payments as provided herein shall remain in full force and effect following the reduction of that ceiling.
- c. The M&R Water Payments shall not exceed \$6.00 and \$12.00 (October 1992 price levels) per acre-foot for Irrigation Water and M&I Water, respectively.
- d. Taking into account all funds collected under the title, the M&R Payment Obligation to be assessed and collected in a given fiscal year shall be assessed “to the greatest degree

practicable” in the same proportion, measured over a ten-year rolling average, as water and power users’ respective allocation of costs assigned for repayment of the CVP.¹⁶

- e. All dollar amounts referenced in the Act relative to October 1992 price levels shall be adjusted annually by Reclamation to reflect fluctuations in costs over time. The adjustment shall be accomplished through use of the Consumer Price Index for All Urban Consumers (CPI-U).

3. The Assignment of Mitigation and Restoration Payments

To meet the above objectives and constraints, Reclamation shall:

- a. Set water M&R payments at \$6.00 and \$12.00 (October 1992 price levels) for Irrigation Water and M&I Water sold and delivered, unless, prior to the start of the fiscal year, water revenues are projected to cause the fund to exceed the \$30 million (October 1992 price levels) over the three year period¹⁷. If that is the case, the \$6.00 and \$12.00 (October 1992 price levels) per acre-foot for Irrigation Water and M&I Water, shall be lowered to ensure that the \$90 million (October 1992 price levels) will not be exceeded in the following year. Any such reduction shall maintain the relative ratio of payment between Irrigation Water and M&I Water. For example, if the M&R payment for Irrigation Water is reduced to \$5.00 per acre-foot (October 1992 price levels), then the M&R payment for M&I Water would be reduced to \$10 per acre-foot (October 1992 price levels). This will ensure proportionality is maintained over any three-year period.
- b. For determining power’s M&R payment obligation apply the appropriate allocation percentage identified from the ten-year rolling average for repayment of the CVP (as described in Section 2.b. of this Part) to actual water receipts, inclusive of both discretionary and non-discretionary, using a two year lag. For example: in determining power’s payment obligation for any fiscal year (e.g., FY X), use actual water receipts from two years prior (e.g., FY X – 2). Apply the most recent allocation factors from the previous ten years, which is also in a two year lag based on timing of available data.
- a-c. The appropriated amount when compared to the most recent projected total of all Non-Discretionary Revenues dictates that a lesser amount than \$30 million (October 1992 price levels) of M&R Payments is needed during the subject fiscal year to meet the amount appropriated.
- b-d. The rolling average limit has been reduced to \$15 million (October 1992 price levels) as discussed in subsection 2.b. of Part H of these Guidelines. Pursuant to this situation, subsection 3.a. and 3.b. of Part H will be appropriately modified.

¹⁶ The allocation of costs assigned for repayment is derived from the CVP plant-in-service cost allocation. The repayment obligations will take into account all applicable costs and assumptions as outlined in Appendix B of these Guidelines.

¹⁷ The three year period shall mean the next fiscal year, the current fiscal year, and the prior fiscal year.

e. Develop and use each fiscal year the most recent available CVP Plant in Service allocation. A rolling 10-year average cost allocation will be used in the assessment and collection of Restoration Fund revenues from Water and Power. The 10-year rolling average will be updated annually to include the most recent annual plant in service allocation for the CVP. The allocation factors will also use the two year lag identified above.

f. In the event that the Secretary has unintentionally under-collected or conversely over-collected relative to water and power users' respective allocation of costs, the annual CVPIA True-up process will be the mechanism where any over or under-collections will be addressed.

4. Ability to Pay Limitations

a. Applicability. The M&R Payment for Irrigation Water may be reduced to reflect a Water Contractor's ability to pay as determined and adjusted by the Secretary at no less than 5-year intervals. Ability to pay limitations on M&R Payments are not applicable to M&I Water.

b. Determinations. Ability to pay determinations shall be consistent with the Reclamation Manual¹⁸.

c. Requests. The Water Contractor must submit to Reclamation a formal request for consideration for a reduction in the M&R Payment due to ability to pay limitations. The costs of performing the required ability to pay study shall be the responsibility of the requesting Water Contractor.

d. Reduction of M&R Payments Subject to ATP Relief. M&R Payments in excess of a Water Contractor's ability to pay will not be required for repayment in the fiscal year in which the ability to pay limitation is demonstrated.

5. Rescheduled Water¹⁹

M&R Payments are applicable to Project Water which is rescheduled from delivery in one water year (e.g., water year X) to delivery in a later water year (e.g., water year X+1). Because the Act applies M&R Payments only to Project Water actually delivered, rescheduled water which is delivered to a Water Contractor or a transferee or an intermediary consistent with an approved transfer shall be subject to M&R Payments in the year of actual delivery (e.g., year X+1).

6. Banking of Transferred Water

In those instances when Project Water is banked with an intermediary party for the principle purpose of providing a future water supply to the transferee, the water shall be treated as Delivered Project Water when delivered to the intermediary party and not when withdrawn from the Bank. The M&R Payment shall be that in effect in the year of delivery to the intermediary.

7. Type of Water Use

¹⁸ Reclamation Manual are internal guidance documents which detail various procedures and policies applicable to a range of authorized Reclamation functions. The Reclamation Manual can be found at <https://www.usbr.gov/recman/>. In particular, PEC 11-01 will provide specific guidance for irrigation ability to pay analyses.

¹⁹ All proposals to reschedule water to a later year must be approved by Reclamation.

The manner in which Project Water is used (as Irrigation Water or M&I Water) and the resulting M&R Payment to be paid shall be consistent with the actual use of such water by the Water Contractor or transferee(s). In those instances when Project Water is banked with an intermediary, the type of water shall be consistent with the ultimate intended use by the transferee consistent with the applicable transfer agreement.

8. Payments Due, Delinquent Payments, and Adjustments for Water Contractors

The Water Contractor (the transferor) is responsible for full payment of all M&R Payments for Project Water delivered to the Water Contractor, or a transferee, or intermediary. The total amount of M&R Payments owed for water delivered is due and payable by the Water Contractor by the end of the month following the month of delivered. Such amounts shall be consistent with the quantities of Project Irrigation and M&I Water shown in Reclamation's water delivery report for the subject month. The water delivery report shall be regarded by the Water Contractor as a bill for all M&R Payments.

Any adjustments for overpayment or underpayment shall be accomplished through the adjustment of M&R Payments or other charges due to the United States relative to the subject Water Service Water Rights Settlement or Repayment Contract and payable in the next month.

The amount to be paid for past due payment of M&R Payments shall be computed in a manner consistent with the terms included in the Water Contractor's then existing Water Service, Water Rights Settlement or Repayment Contract.

Transferees are not responsible for payment to the United States of M&R Payments applicable to Project Water transferred to them.

10. Relationship to Other Project Water Payments and Surcharges

The responsibility of the Water Contractors to pay their applicable M&R Payments as described above shall be in addition to all other payments required by the Act and other applicable provisions of reclamation law.

11. Payments Due, Delinquent Payments, and Adjustments for Power Contractors

WAPA shall prorate the Power M&R Payment Obligation among the various Project power beneficiaries and shall bill them for the resulting M&R Payments. Provisions regarding delinquency, payments dates, and payment adjustments are addressed in an agreement between WAPA and Reclamation.

12. Revenues to be Credited to the Restoration Fund

All M&R Payments shall be credited to the Restoration Fund as described in these Guidelines.

PART H

RESTORATION PAYMENTS

[Subsection 3407(c) & (d)]

1. Applicability

Section 3407 of the Act provides that to the extent required in Congressional acts appropriated funds to partially finance the costs to carry out “programs, projects, plans, and wildlife restoration, improvement and acquisition provisions” of the Act, Reclamation shall:

- a. Determine, assess, and collect additional annual mitigation and Restoration payments (hereafter referred to as Restoration Payments) on Project Irrigation Water and M&I Water, Additional Project Water, Project Water provided pursuant to a Water Rights Settlement Contract, Flood Water used for M&I purposes, and Section 215 Water, if any, which is sold and delivered to the Water Contractors, and
- b. Determine a Power Restoration Payment Obligation to be assigned to Power.

The Western Area Power Administration (Western) shall prorate the Power Restoration Payment Obligation among various power beneficiaries and shall assess the resulting Power Restoration Payments.²⁰

Restoration Payments shall not be assessed on Base Water, Exchange Water, other Project Water made available without charge to the recipient as provided by applicable reclamation law, or Warren Act Contract deliveries.

2. Objectives and Constraints

The Total Restoration Payment Obligation to be collected for Project M&I Water, Project Irrigation Water and Power (hereafter referred to collectively as the Three Functions) is to be assigned annually consistent with the objectives and constraints set forth below:

- a. All dollar amounts referenced in the Act relative to October 1992 price levels shall be adjusted annually by Reclamation to reflect fluctuations in costs over time. The adjustment shall be accomplished through use of OMB escalation factors.
- b. When the Total Restoration Payment Obligation assigned to the Three Functions (the Discretionary Payments) is combined with all projected Non-Discretionary Revenues to be deposited into the Restoration Fund, if any, in a given fiscal year, the total of all projected revenues shall approximate the appropriated amount for that fiscal year unless:

- 1) The annual average amount appropriated by the Congress prior to fiscal year 1997 is less than the targeted appropriation of \$50 million (October 1992 price levels). Under such circumstances yet consistent with all other objectives and constraints presented herein, the Secretary shall impose Restoration Payments in fiscal year 1998 and

²⁰ Western WAPA has advised Reclamation that the procedures by which it will prorate, assess and collect the Power Restoration Payment Obligation will be established following a public process to be held by Western WAPA.

thereafter as may be required to yield in each year total collections equal to \$50 million (October 1992 price levels) on a three-year rolling average basis.

- 2) ~~The Secretary has determined that all mitigation and restoration actions required by Section 3406 of the Act are completed. Thereafter, the amount appropriated each year and the total of all Restoration Funds to be collected in each fiscal year thereafter shall be reduced to \$35 million (October 1992 price levels). All other objectives and constraints applicable to Restoration Payments as detailed herein shall remain in full force and effect following the reduction of that ceiling.~~
- e. ~~The Total Restoration Payment Obligation shall not exceed \$30 million (October 1992 price levels) based upon a three-year rolling average. Following the determination by the Secretary that all mitigation and restoration actions required by Section 3406 are complete, the \$30 million (October 1992 price levels) rolling average limit shall be reduced to \$15 million (October 1992 price levels). All other objectives and constraints applicable to Restoration Payments as provided herein shall remain in full force and effect following the reduction of that ceiling.~~
 - d. ~~The Restoration Payments shall not exceed \$6.00 and \$12.00 (October 1992 price levels) per acre-foot for Project Irrigation and M&I Water, respectively.~~
 - e. ~~Taking into consideration all Non-Discretionary Revenues and Non-Federal Contributions, if any, the Total Restoration Payment Obligation to be assessed and collected in a given fiscal year shall be proportioned "to the greatest degree practicable" among the Three Functions in such a way that all revenues collected, as measured through the ten-year rolling average, reflect the Three Functions' respective allocation for repayment of the Project (hereafter, referred to as the Target Allocation²⁴).~~
 - f. ~~In the event the historic records demonstrate that the Secretary has unintentionally under-collected or conversely over-collected relative to the target cumulative amounts of total Restoration Funds to have been collected, the Secretary shall make adjustments to the Restoration Payments to correct for such under- or over-collections in the next fiscal year consistent with all the other requirements as included herein.~~

3. The Assignment of Restoration Payments

To meet the above objectives and constraints, Reclamation shall:

- a. ~~Set the Total Restoration Payment Obligation to be collected, including the Power Restoration Payment Obligation, at \$30 million (October 1992 price levels) each and every year unless:~~
 - 1) ~~The appropriated amount when compared to the most recent projected total of all Non-Discretionary Revenues dictates that a lesser or greater amount than \$30 million~~

²⁴ ~~The respective allocations for repayment of the Project shall be exclusive of any Water Contractor obligations to provided for the repayment of distribution and drainage service constructed for or financed by the United States for the exclusive use of individual Water Contractors.~~

~~(October 1992 price levels) of Restoration Payments is needed during the subject fiscal year to meet the amount appropriated.~~

- ~~2) The three year rolling average of the total Restoration Payments based on the two most recent years' actual and the prior fiscal year's most recent Restoration Funds revenue projections indicate that total Restoration Payments collected during that three-year period shall exceed (or conversely, shall fall short of) the \$30 million (October 1992 price levels) average limit. Reclamation shall adjust the \$30 million (October 1992 price levels) target as appropriate.~~
 - ~~3) The rolling average limit has been reduced to \$15 million (October 1992 price levels) as discussed in subsection 2.c. of Part H of these Interim Guidelines. Pursuant to this situation, subsection 3.a (1) and 3.a (2) of Part H will be appropriately modified.~~
- ~~b. In support of the Target Allocation, Reclamation shall develop and use each fiscal year the most recent available allocation which will reflect actual project accomplishments for the most recent water year.²² The use of a rolling 10-year average allocation based upon aggregating over time the individual annual Project allocations will result in the assessment and collection of Restoration Fund revenues—as may be limited by the other constraints and hydrologic variability—in amounts expected to be “to the greatest degree practicable” close to the Target Allocation.~~
- ~~c. In recognition of the (a) absolute ceiling relative to the M&I and Irrigation Restoration Payments; (b) the requirement to assess and collect Restoration Payments from the Three Functions as measured over a ten-year rolling average—“to the greatest degree practicable”—in accordance with the Target Allocation; and (c) the expectation that the future Project hydrology will require Power to periodically assume responsibility for Restoration Payment shortfalls by the Water Contractors, the Water Contractors will be automatically charged each and every fiscal year the maximum permitted Restoration Payment per acre-foot [that is, \$6.00 (October 1992 price levels) and \$12.00 (October 1992 price levels) per acre foot of Project Irrigation and M&I Water, respectively.] (Hereafter, this policy shall be referred to as the Maximum Restoration Payment Policy.) The remaining portion of the Total Restoration Payment Obligation shall be assigned to Power.~~

~~The Maximum Restoration Payment Policy shall remain in full force and effect unless and until the record of historic actual revenues demonstrates that the percentage allocations to either or both of the Irrigation and M&I Water supply functions will exceed their allocable shares relative to the Target Allocation.~~

²²Due to the time lag in analyzing actual project accomplishments, the allocation to be used for fiscal year 1998, for example, will in fact reflect actual Project accomplishments for fiscal year 1996. The 10-year rolling allocation for the period fiscal year 1994 through fiscal year 2003, for example, will actually represent project accomplishments from fiscal year 1992 through fiscal year 2001. This procedure represents the “closest” allocation possible relative to concurrent (real-time) Project accomplishments.

d. ~~In the event the Maximum Restoration Payment Policy is discontinued relative to the Irrigation and/or M&I water supplies functions, that portion of the Total Restoration Payment Obligation to be allocated to the Irrigation and/or M&I water supply functions, whichever or both are determined to be in excess of their allocable shares relative to the then Target Allocation, shall be directly calculated through application of the percentage allocation determined by Secretary to be necessary to bring the function closer to the Target Allocation (Hereafter this procedure shall be referred to as the Direct Calculation Method.) The necessary corrections may be implemented over time as necessary to stabilize the various Restoration Payments impacted the change in procedure.~~

~~The portion of the Total Restoration Payment Obligation assigned to the Project Irrigation and M&I Water supply functions through application of the Direct Calculation Method shall be prorated respectively over all Project Irrigation and M&I Water projected to be sold and delivered during the subject fiscal year, but shall be limited to no more than the applicable Restoration Payment limitations. The remaining portion of the Total Restoration Payment Obligation which are not assigned to the M&I or Irrigation water supply functions through the Direct Calculation Method or the Maximum Restoration Payment Policy, as applied consistent with these Interim Guidelines, shall be assigned to Power.~~

~~Application of the Direct Calculation Method does not preclude reinstated at a later date of the Maximum Restoration Payment Policy as may be appropriate.~~

~~A sample calculation illustrating many of the above limits, constraints and procedures applied to a modified 1984 through 1992 hydrology is presented in Appendix C of these Interim Guidelines. Consistent with the example hydrology and various other assumptions explained in Appendix C, the Maximum Restoration Payment Policy remained in full force relative to both the Irrigation and M&I Water supply functions throughout the term of the example.~~

~~4. Ability to Pay Limitations~~

- a. ~~**Applicability.** The Restoration Payment for Project Irrigation Water may be reduced to reflect a Water Contractor's ability to pay as determined and adjusted by the Secretary at no less than 5-year intervals. Ability to pay limitations on Restoration Payments are not applicable to M&I Water.~~
- b. ~~**Determinations.** Ability to pay determinations shall be consistent with Reclamation Instructions²³, and follow the development of appropriate criteria shall take into account the "benefits" resulting from implementation of this Act.~~
- c. ~~**Requests.** The Water Contractor must submit to Reclamation a formal request for consideration for a reduction in the Restoration Payment due to ability to pay limitations. The costs of performing the required ability to pay studies shall be the responsibility of the requesting Water Contractor.~~

²³ Reclamation Instructions are internal guidance documents which detail various procedures and policies applicable to a range of authorized Reclamation functions.

- d. ~~**Reassignment of Costs.** Any portion of the Restoration Payments in excess of a Water Contractor's ability to pay shall be reassigned to the Commercial Power function for repayment in the fiscal year in which the reassignment is made, unless the Restoration Payment applicable to the Water Contractor for Irrigation Water in the subject year is less than \$6.00 (October 1992 price levels) per acre-foot as determined by the Direct Calculation Method. Under the latter circumstance, any amounts in excess of a Water Contractor's documented ability to pay shall be added first to the Restoration Payment applicable to the total remaining Project Irrigation Water supply until the resulting Restoration Payment by the other Water Contractors reaches \$6.00 (October 1992 price levels) per acre-foot. Thereafter, any remaining outstanding amounts will be added to the Power Restoration Payment Obligations.~~
- e. ~~**Order of Financial Relief.** If an ability to pay calculation demonstrates that a Water Contractor has an ability to pay something more than its applicable O&M costs but less than the total of its assigned O&M, capital and Restoration Payment, partial relief shall be designated as first applying to the most recent of the applicable obligations and the to other less senior obligations in descending order of seniority.~~

~~**5. Variability in Restoration Payments**~~

~~Consistent with the above (Sections 1 through f of Part H), the required Restoration Payments and Total Power Restoration Payment Obligation may vary considerably from fiscal year to fiscal year due to the following:~~

- a. ~~Uncertainty in any fiscal year over the extent to which Congress will appropriate funds from the Restoration Fund. With the exception of the circumstances which mandate the collection of \$50 million annually as described in subsection 2.b.(1) of Part H of these Interim Guidelines, Congress can appropriate as little as \$0 or as much as \$50 million (October 1992 price levels) to be made available from the Restoration Fund in any fiscal year.~~
- b. ~~The magnitude of water transfers, particularly those transfers intended for M&I purposes, to non-Project entities.~~
- c. ~~The projected water supplies upon which the Restoration Payment is applied. For example, in the event of a low water supply, the total of all Restoration Payments to be collected from the Irrigation and M&I Water supply function will be constrained by the projected water supply and the maximum Restoration Payment limitations applicable to the water supply functions. In order to collect the required amount of Restoration Funds, an additional allocation must be made to Power in excess of that indication by the Target Allocation.~~
- d. ~~Ability to pay limitations as may be applicable to Water Contractors having an Irrigation Water supply.~~
- e. ~~Changes in Project accomplishments and, thereby, the Target Allocation over time.~~

~~**6. Rescheduled Water**~~²⁴

~~Restoration Payments are applicable to Project Water which is rescheduled from delivery in one water year (e.g., water year X) to delivery in a later water year (e.g., water year X+1). Because the Act applies~~

²⁴All proposals to reschedule water to a later year must be approved by Reclamation.

Restoration Payments only to Project Water actually delivered, rescheduled water which is delivered to a Water Contractor or a transferee or an intermediary consistent with an approved transfer shall be subject to Restoration Payments in the year of actual delivery (e.g., year X+1).

7. Banking of Transferred Water

In those instances when Project Water is banked with an intermediary party for the principle purpose of providing a future water supply to the transferee, the water shall be treated as Delivered Project Water when delivered to the intermediary party and not when withdrawn from the Bank. The Restoration Payment shall be that in effect in the year of delivery to the intermediary.

8. Type of Water Use

The manner in which Project Water is used (as Irrigation Water or M&I Water) and the resulting Restoration Payment to be paid shall be consistent with the actual use of such water by the Water Contractor or transferee(s). In those instances when Project Water is banked with an intermediary, the type of water shall be consistent with the ultimate intended use by the transferee consistent with the applicable transfer agreement.

9. Payments Due, Delinquent Payments, and Adjustments for Water Contractors

The Water Contractor (the transferor) is responsible for full payment of all Restoration Payments for Project Water delivered to the Water Contractor, or a transferee, or intermediary. The total amount of Restoration Payments owed for water delivered is due and payable by the Water Contractor by the end of the month following the month of delivered. Such amounts shall be consistent with the quantities of Project Irrigation and M&I Water shown in Reclamation's water delivery report for the subject month. The water delivery report shall be regarded by the Water Contractor as a bill for all Restoration Payments.

Any adjustments for overpayment or underpayment shall be accomplished through the adjustment of Restoration Payments or other charges due to the United States relative to the subject Water Service Water Rights Settlement or Repayment Contract and payable in the next month.

The amount to be paid for past due payment of Restoration Payments shall be computed in a manner consistent with the terms included in the Water Contractor's then existing Water Service, Water Rights Settlement or Repayment Contract.

Transferees are not responsible for payment to the United States of Restoration Payments applicable to Project Water transferred to them.

10. Relationship to Other Project Water Payments and Surcharges

The responsibility of the Water Contractors to pay their applicable Restoration Payments as described above shall be in addition to all other payments required by the Act and other applicable provisions of reclamation law.

11. Payment by Power of Restoration Payments

Western (Western) shall prorate the Power Restoration Payment Obligation among the various Project power beneficiaries and shall bill them for the resulting Restoration Payments. Provisions regarding delinquency, payments dates, and payment adjustments shall be addressed in an agreement between Western and Reclamation.

12. Revenues to be Credited to the Restoration Fund

All Restoration Payments shall be credited to the Restoration Fund described in Part B of these Interim Guidelines.

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PART I

NOTIFICATION OF AMOUNTS TO BE PAID

1. **WATER:** Reclamation shall include in its annual preliminary water rate publications all applicable CVPIA Restoration Fund Charges~~payments and charges~~ required by the Act to be paid by the Water Contractors during the forthcoming fiscal year. For the purposes of implementing and maintaining the Restoration Fund, the applicable ~~payments and~~ charges as required by the Act shall be regarded as final for the subject fiscal year. The preliminary water rates~~CVPIA Restoration Fund Charge is a~~ usually made available on or about July 1 of each ~~year~~year and are included in finalized water rates schedule A-1.
2. ~~**POWER:** Concurrent with the release of the annual preliminary water rate publications, Reclamation shall notify Western WAPA of the Power Restoration Payment Obligation in accordance with the Letter of Agreement No. 93-SAO-10156. Additionally, Western will be notified on or about April 15 of each year of any mid-year adjustment to the Power Restoration Payment Obligation. to be directly assigned to Power and the amount, if , which will be indirectly assigned to Power as a result of the per acre-foot Restoration Payment limits applicable to the Irrigation and M&I Water supply functions. The power Restoration Payment Obligation and amount, if any, which will be indirectly assigned to Power as a result of the per Restoration payment limits applicable to water shall be regarded a final relative to the subject fiscal year. Reclamation will notify Western of any amounts to be paid by Power as a result of ability to pay limitation.~~

PART J

NON-FEDERAL CONTRIBUTIONS

1. Monies donated by Non-Federal entities shall be credited to the Restoration Fund to foster one or more specific purpose.
2. Such Non-Federal Contributions shall be expended by the United States only for the purposes(s) specified by the Contributor(s) and shall not be subject to appropriation.
- ~~3.~~ The Secretary shall not accept a Non-Federal Contribution for credit to Restoration Fund prior to the execution of a written agreement between the Contributors and the United States. (Based on negotiation and other matters concerning the content and execution of the proposed agreement shall be developed and forwarded to Reclamation's Washington Office for review and approval prior to execution of a written agreement.)

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PART K

RESTORATION FUND FINANCIAL REPORTS

[Subsection 3407(f)]

1. By September 30, 1994, and annually thereafter, the Secretary shall prepare and submit a detailed financial report to the following ~~four~~five Congressional committees:
 - a. Senate Committee on Energy and Natural Resources;
 - b. Committee on Appropriations of the Senate;
 - ~~c. House Committee on Natural Resources;~~
 - c.
House committee on Merchant Marine and Fisheries; and
 - d. Committee on Appropriations of the House of Representatives.
2. The financial report shall detail:
 - a. All deposits made to the Restoration Fund during the prior fiscal year including the source(s) of each deposit; Restoration Fund expenditures by authorized activity and responsible entity (entities) during the prior fiscal year; and the beginning and end-of-year balances of the Restoration Fund, and
 - ~~b. Upcoming fiscal year's projections of deposits to and expenditure from the Restoration Fund, and the beginning and anticipated end-of-year balances of the Restoration Fund.~~
 - ~~c.~~
 - ~~d. b. In addition, said financial report shall reflect all State of California and reimbursable and nonreimbursable Federal expenditures other than those from the Restoration Fund incurred in the subject fiscal year to carry out the provisions of this Title.~~