Guidelines
For Preparing and Reviewing Proposals for
Water Conservation and Improvement Projects
Under Public Law 106-576

Lower Rio Grande Valley
Water Resources Conservation and Improvement Act of 2000
INTRODUCTION

The Rio Grande is one of the most important water resources along the Texas-Mexico border because of its bi-national importance to agriculture, municipalities and industry.

In the Lower Rio Grande Valley, the Rio Grande has been severely impacted by prevalent drought conditions during the past decade. There are more than seven million people residing on both sides of the Rio Grande in the valley, and approximately one million of those are living on the United States side. Twenty-nine water districts are located in the United States below the International Falcon-Amistad Reservoir System, which supplies nearly 95% of their water needs. The Lower Rio Grande Valley region is one of the fastest growing areas with expectations of more than doubling the population by the year 2050. Implementation of significant improvements to irrigation canal delivery systems, aggressive water conservation programs, and improved water management are critical needs which must be addressed in the next few years.

In the far west Texas region of El Paso and Hudspeth Counties, the waters of the Rio Grande are distributed in accordance with the Congressional Authorizations of the Bureau of Reclamation's Rio Grande Project. Unlike the Lower Rio Grande Valley, municipalities do not have primacy for use of surface water, even in times of drought. The City of El Paso currently relies upon the Hueco Bolson (aquifer) to meet 45% of its drinking water supply, and neighboring Ciudad Juarez for 100% of its needs. The United States Geological Survey (USGS) has estimated that this aquifer will begin to run dry in Ciudad Juarez by 2005, and will be severely depleted by 2025 in El Paso. Irrigation system improvements, water conservation projects and increased efficiencies are paramount to meeting this region’s growing demands for potable water.

On December 28, 2000, the President of the United States signed into law the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 (Act), or Public Law 106-576 (See Exhibit A). The purpose of this legislation was to develop a program to investigate and identify opportunities to improve the water supply for selected counties along the Texas-Mexico border, and to provide funding authorization for engineering work, infrastructure construction and improvements for the four selected projects. The Act defines the Program Area as the counties in the State of Texas in the Rio Grande Regional Water Planning Area known as Region “M” and the counties of El Paso and Hudspeth. Since it is the intention of both Reclamation and the project sponsors that none of the projects will be federally owned or operated, it is expected that the operation and maintenance costs will be borne by the project sponsors. This document was prepared pursuant to Section 3b of the Act and explains the process that should be followed to receive consideration for financing. The project sponsor may choose to enter into an agreement with Reclamation to develop any of the required documents.

The Bureau of Reclamation is the agency tasked with administering the Act. The Reclamation contact for this program is the Area Manager for the Oklahoma-Texas Area Office, 300 East 8th St., Room 801, Austin, Texas 78701, phone: (512) 916-5641.
The process for submitting, reviewing and financing water conservation and conveyance projects set forth in the Act may be divided into four distinctive parts: Defining, Qualifying, Authorizing, and Constructing the proposed project.
PART I: Defining the Project:

During this first part of the process, a project moves from a concept to a proposal that improves water supplies in the Program Area as set forth in the Act.

The Project Plan

To begin the review process, a project sponsor prepares or facilitates the preparation of a Project Plan and submits it to Reclamation for preliminary review (Section 3c(2) of the Act). The project sponsor may choose to contract with Reclamation to develop the Project Plan at 50/50 percent cost-sharing (Section 3f of the Act). The Project Plan need only include a summary of the proposed project and an explanation of how it will improve the water supply of the Program Area. The summary should state the problems and opportunities, the alternatives considered and identify the recommended alternative. In addition, a general map showing the location of the proposed physical features, conceptual engineering drawings of structures, and general standards for design shall be submitted as part of the Project Plan.

Reclamation will provide a Preliminary Review of the Project Plan and determine if the proposed project would meet the purposes of the Act, namely, to improve the supply of water for the Program Area. Improvements can include, but are not limited to, the conservation and transportation of raw water through lining of irrigation canals and increasing the use of pipelines, flow control structures, meters, and associated appurtenances of water supply facilities. If Reclamation determines that the proposed project will improve the supply of water for the Program Area, the project may continue to Part II. If, however, Reclamation determines that the proposed project does not meet the requirements of the Act, the sponsor will be notified and will be afforded the opportunity to revise and re-submit the Project Plan.

PART II: Qualifying and Prioritizing the Project

Once Reclamation determines that a Project Plan improves the supply of water for the Program Area, the project sponsor may submit the project to Reclamation for approval. At that time, the sponsor should indicate who they wish to prepare the Project Report, e.g., Reclamation or the project sponsor’s consultant. Within one year after the date the project is submitted for approval, Reclamation, subject to the availability of appropriations, shall determine whether the project meets the criteria under this section of the Guidelines (Section 3e of the Act).

The Project Report

Section 3c(1) of the Act requires that a Project Report must also be developed. If the project sponsor is not choosing to contract with the Secretary (through Reclamation) to prepare the Project Report, the sponsor should have a competent engineering entity prepare the Project Report to be reviewed by Reclamation. If the project sponsor contracts with the Secretary to prepare the Project Report (or portions thereof), all of the Secretary’s costs would be 50 percent reimbursable by the non-Federal sponsor (Section 3f of the Act), but may include in-kind contributions of goods and services (See Exhibit B). The costs of Reclamation’s review of an engineering entity’s Project Report would not be the responsibility of the project sponsor.
Regardless of who prepares the Project Report, the process and methodology for all estimates used in preparing the report should be documented. The data upon which the Project Report is based must be of such quality and quantity as will assure the ability of the project to produce at least the values estimated and that it can be constructed at no more than the estimated costs. The estimated costs should establish a construction cost ceiling that will cover all costs under the cost-sharing agreement.

Each Project Report must include the following information:

1. A project budget with the annual estimated project costs, including any necessary mitigation features, categorized by Project Plan, Project Report, and Construction. In addition, the Project Report should contain an estimate of annual operation and maintenance (O&M) costs for the project. The price base (date) for construction and O&M estimates should also be included. The budget should include the value of in-kind contributions of goods and services, and sources of funds previously spent on the feasibility and engineering studies related to the Project Plan and Report;

2. An analysis showing how the project would reduce, postpone, or eliminate the need for development of new or expanded water supplies;

3. A description of conservation measures to be taken pursuant to the project plans;

4. An assessment of the near- and long-term water demands and supplies in the study (project) area. Historical and projected population and water use data provided by Texas Water Development Board (TWDB) would be sufficient;

5. Engineering plans, designs, and analyses that demonstrate that the project would provide operational efficiency improvements or achieve water, energy, or economic savings (or any combination thereof). The expected savings should be expressed in terms of the rate of acre-feet of water, BTUs of energy, or dollar of economic savings per dollar expended on the construction of the project. An estimated schedule demonstrating the sequencing and the duration of the design and construction of the Project shall be included. Engineering plans, designs and analyses must be certified by a registered professional engineer.

6. Documentation that all regulatory compliance requirements have been met, including those of the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), Section 404 of the Clean Water Act, and other relevant Federal and State statutes, as well as all consultation protocols of potentially affected Native American Indian Tribes. Reclamation will initiate the necessary review processes during Part II. As a Federal agency, Reclamation may not delegate the ultimate responsibility for many of these regulatory requirements. However, a project sponsor (or their contractor) can provide much of the necessary information and data analysis. Therefore, it is considered prudent to coordinate the preparation of the Project Report with Reclamation at an early date. A Project Report will not be considered complete until all necessary regulatory compliance requirements have been met. The costs for any necessary mitigation alternatives, as developed by Reclamation, the State and the project sponsor, will be added to the total construction costs for the project. Nothing in this paragraph limits or delays compliance activities into the Project Report stage. Reclamation recognizes that regulatory
compliance may be accomplished or initiated at the Project Plan stage; and

7. Each Project Report shall include a brief background section that describes the existing facilities (e.g., their age and condition) and the use of the water being conveyed.

Once the Project Report has been completed, Reclamation may, if requested, provide the sponsor with a preliminary determination of the project’s total priority score.

Determination of Financial Capability

Once the Project Report has been completed, Reclamation will determine whether the non-Federal project sponsor is financially capable of funding the non-Federal share of the project’s construction costs. Subject to additional authorizing legislation, the non-Federal share of the construction costs shall be 50 percent, with not more than 40 percent of the total construction costs paid by the State. The remainder of the non-Federal costs not paid by the State will be the responsibility of the project sponsor as stated in Section 4b of the Act.

To assist Reclamation in making a financial capability determination, the non-Federal sponsor must include a funding plan to accompany the Project Report provided for under Section 3c(1). The plan should describe how the non-Federal share of costs would be obtained. Documentation of financial capability will generally draw from documents which were prepared by the funding entity and/or documents the sponsor was required to submit for the non-Federal funding. Since the project will not be federally owned, the plan shall include the proposed method of funding for all of the project operation and maintenance associated with the completed project.

If the state is providing funds, the funding plan shall include a letter from the TWDB or other appropriate State agency committing the State to the contribution of funds identified in the plan. The plan shall also include an official resolution adopted by the project sponsor’s governing board resolving to fund the remaining portion of the non-Federal 50 percent share and to be responsible for all operation and maintenance costs associated with the completed project.

Any Federal sources of funding involved in the project must be identified in the funding plan, as all Federal sources of funding collectively cannot exceed 50 percent. If the project sponsor proposes other financing methods, Reclamation will seek appropriate supporting documentation during review of the funding plan.

Cost-sharing Agreement for the Construction Costs of the Project

Once the Project Report and Plan have been completed, and once the project sponsor has been determined financially capable of funding its proportionate share of the project’s construction costs, the non-Federal project sponsor(s) must sign a cost-sharing agreement with Reclamation that commits the non-Federal project sponsor to funding its proportionate share of the project’s construction costs on an annual basis (Sections 3c(3) and 4b of the Act). The specific shares for a particular project are usually determined by its authorizing legislation.

At present, Section 4 of the Act requires that the non-Federal share of the costs of any construction for
the four presently authorized projects shall be 50 percent. Of this amount, the Act states that not more than 40 percent of such costs may be paid by the State of Texas. The remaining construction costs will be the responsibility of the project sponsor, but may include in-kind contributions of goods and services, and funds previously spent on feasibility and engineering studies. Criteria and procedures for cost-sharing agreements with Reclamation may be found in Exhibit B. It must be noted that, although the Act allows funds previously spent on studies to count towards the project sponsor’s share, the requirements that the Federal share shall be 50 percent and the State share not exceed 40 percent may impose a significant restriction to the applicability of previous expenditures. Therefore, each participant’s share of the construction costs will be determined on a project-by-project basis at the time the cost-sharing agreement with the Secretary is developed.

The cost-sharing agreement will describe which signatory entities would be responsible for which activities. For example, final designs and specifications, contract administration, construction, and construction oversight.

**Determination of the Project Qualification and Priority**

Within one year after the date a project is submitted to Reclamation for approval, Reclamation, subject to the availability of appropriations, shall determine whether the project meets the criteria established by the Act, and therefore qualifies for construction financing.

To determine if a project qualifies, the following will be used as minimum criteria:

1. The project must improve the supply of water for the Program Area (Section 3a).
2. The project sponsor must provide a Project Plan to Reclamation (Section 3c(2)).
3. A Report of the proposed project (Section 3c(1)), must be prepared by the Bureau of Reclamation, or prepared by any competent engineering entity and reviewed by the Bureau of Reclamation. All costs associated with the preparation of the reports by the Secretary shall be 50 percent reimbursable by the non-Federal sponsor. For a Project Report to be considered complete, it must include the items in the paragraph titled The Project Report.
4. The project sponsor must be determined by Reclamation to be financially capable of funding the project’s non-Federal share of the construction costs (Section 3d).
5. The project sponsor must sign a cost-sharing agreement with Reclamation for its proportionate share of the project’s construction costs on an annual basis (Section 3c(3)).

Based upon a review of the Project Report and the information developed under Paragraph 6 of the section above entitled “The Project Report”, the priority of the project for financing will be determined under the following criteria:

1. Water Supply/Demand (60 points)
a. The project would conserve and transport raw water in the program area. (20 points, all or nothing)

b. The degree to which the project would reduce, postpone or eliminate the need for development of new or expanded water supplies. (0-10 points, to be determined by Technical Review Team)

c. The amount of water conserved relative to the total annual water right of the project sponsor. (0-10 points, to be determined by Technical Review Team).

d. The extent to which the project would have beneficial implications to other water resources or users in the program area. (0-20 points, subjective).

2. Operational Efficiency (40 points)

a. Annual acre-feet of water saved per dollar of construction cost. (0-10 points, to be determined by Technical Review Team)

b. Annual energy saved (BTU’s) per dollar of construction cost. (0-10 points, to be determined by Technical Review Team)

c. Annual economic savings per dollar of construction cost. (0-10 points, to be determined by Technical Review Team)

d. The project sponsor is financially capable of meet the anticipated operation and maintenance costs of the project. (10 points, all or nothing)

PART III: Authorizing and Financing:

Once a project has been determined by Reclamation to qualify for financing and has been assigned a priority, the necessary authorization and appropriations would need to be made available from Congress in order for Reclamation to fund the Federal share of construction costs.

PART IV: Construction:

Pursuant to authorizing legislation and available funds, final designs and specifications, contract administration, construction, and construction oversight will proceed as agreed to in the cost sharing agreement.

Before terminating the cost share agreement, Reclamation will verify that construction is complete and that the funds were used for the authorized purpose.
EXHIBITS


EXHIBIT B: The Criteria and Procedures for Reviewing Cost-Share Agreements on Reclamation Projects.